

1 UNITED STATES DISTRICT COURT  
2 NEW YORK - DISTRICT OF NEW YORK

3 DOCKET NO. CV 97-7640

4 - - - - - X  
5 ROBERT A. FALISE, LOUIS KLEIN, :  
6 JR., FRANK MACCHIAROLA, :  
7 CHRISTIAN E. MARKEY, JR., :  
8 As Trustees, :  
9 Plaintiff, :

10 v. :  
11 THE AMERICAN TOBACCO COMPANY, :  
12 R.J. REYNOLDS TOBACCO COMPANY, :  
13 B.A.T INDUSTRIES, PLC; BROWN :  
14 & WILLIAMSON TOBACCO :  
15 CORPORATION; :  
16 PHILIP MORRIS INCORPORATED; :  
17 LIGGETT GROUP, INC.; :  
18 LORILLARD TOBACCO COMPANY, :  
19 Defendants. :

20 - - - - - X

21 Washington, D.C.

22 Wednesday, October 13, 1999

23 Videotape Deposition of MARIANNA S. SMITH,  
24 a witness herein, called for examination by counsel  
25 for Defendant Brown & Williamson in the

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1 above-entitled matter, pursuant to notice, the  
 2 witness being duly sworn by SUSAN L. CIMINELLI, CRR,  
 3 RPR, a Notary Public in and for the District of  
 4 Columbia, taken at the offices of Kirkland & Ellis,  
 5 655 15th Street, N.W., Washington, D.C. at 9:18:08  
 6 a.m., Wednesday, October 13, 1999, and the  
 7 proceedings being taken down by Stenotype by SUSAN L.  
 8 CIMINELLI, CRR, RPR, and transcribed under her  
 9 direction.

Page 4

## 1 APPEARANCES (Continued):

2  
 3 On behalf of the Plaintiffs and Witness:  
 4 JAMES L. STENGEL, ESQ.  
 5 Orrick, Herrington & Sutcliffe LLP  
 6 666 Fifth Avenue  
 7 New York, New York 10103-0001  
 8 (212) 506-3775  
 9

10 On behalf of the witness and of counsel  
 11 to Mr. Stengel:  
 12 BEN J. WEAVER, ESQ.  
 13 Krupnick, Campbell, Malone, Roselli,  
 14 Buser, Slama & Hancock  
 15 Suite 100  
 16 Courthouse Law Plaza  
 17 700 Southeast Third Avenue  
 18 Fort Lauderdale, FL 33316  
 19 (954) 763-8181  
 20

21 ALSO PRESENT:  
 22 DAVID AUSTERN  
 23 STEPHEN GRIDER, Videographer  
 24  
 25

Page 3

## 1 APPEARANCES:

2 On behalf of the Defendant Brown & Williamson:  
 3 DAVID BERNICK, ESQ.  
 4 SARAH R. MARMOR, ESQ.  
 5 Kirkland & Ellis  
 6 200 East Randolph Drive  
 7 Chicago, IL 60601  
 8 (312) 861-2444  
 9

10 On behalf of the Defendant Philip Morris:  
 11 Charles B. MOLSTER, III  
 12 Winston & Strawn  
 13 1400 L Street, N.W.  
 14 Washington, D.C. 20005-3502  
 15 (202) 371-5950  
 16

17 On behalf of the Defendants Lorillard Tobacco  
 18 Company, Philip Morris, Inc., and R.J. Reynolds  
 19 Tobacco Co.:  
 20 STEPHEN L. SAXL, ESQ.  
 21 Greenberg Traurig  
 22 Met Life Building  
 23 200 Park Avenue  
 24 New York, New York 10166  
 25 (212) 801-9371

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2 WITNESS EXAMINATION BY COUNSEL FOR  
 3 MARIANNA S. SMITH DEFENDANT BROWN & WILLIAMSON  
 4 By Mr. Bernick 7  
 5

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## 8 EXHIBITS

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11 and Executive Director, 4/2/90	56
12 37 Memorandum, Gregg Smith to Marianna	
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## PROCEEDINGS

THE VIDEOGRAPHER: On record and the time on screen is 9:18:08. I ask each counsel to identify himself and his party.

MR. BERNICK: This is David Bernick for Brown & Williamson.

MS. MARMOR: Sarah Marmor, for Brown and Williamson.

MR. SAXL: Steven Saxl of Greenberg Traurig for Lorillard Tobacco Company, RJ Reynolds Tobacco Company and Philip Morris, Incorporated.

MR. MOLSTER: Charles Molster, Winston & Strawn for Philip Morris.

MR. WEAVER: Ben Weaver, co-counsel with Mr. Stengel and Mr. Austern for Marianna Smith.

MR. STENGEL: James Stengel for the witness, Marianna Smith and the plaintiffs in this actions, the trustees, the Manville Personal Injury Settlement Trust.

THE VIDEOGRAPHER: Please swear her in. Whereupon,

MARIANNA S. SMITH,

[DELETED]

was called as a witness by counsel for Defendant Brown & Williamson, and having been duly

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then?

A. I would say we are talking 1982 or 3.

Q. Okay. Maybe it's good that we go over a couple of rules. The first is that you understand that you are under oath and you have an obligation to tell the truth.

A. Yes.

Q. The second and equally important rule is that if at any time you don't understand a question that I'm asking you, you have to be sure to let me know and I'll do my best to rephrase the question. If you don't do that, we'll assume that you have understood the question and will reply upon your answers. Can we proceed on that basis?

A. Yes, sir.

Q. Okay. As I understand it, you became the executive director of the Manville Trust in October of 1987?

A. Yes.

Q. And you remained the executive director until what date, roughly?

A. Late November of 1991.

Q. Since that time, could you just give us a sort of rough overview of what your employment has been?

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sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR  
DEFENDANT BROWN & WILLIAMSON  
BY MR. BERNICK:

Q. We all set here, Miss Smith?

A. Yes.

Q. Okay. Before we get into the questioning, I just want to make sure that we cover some of the basic ground rules of the deposition so that we have an understanding about those rules. Have you ever been deposed before?

A. Yes.

Q. On how many occasions?

A. Oh, two or three.

Q. Okay. Could you tell me just general terms what those depositions were about?

A. Those depositions were about legal education back in my time as a law school professor and dean.

Q. Okay. Those were sworn depositions given in connection with a case?

A. Yes. They were litigation within the American University.

Q. Okay. That must have been a while ago,

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A. Since that time, I have served on a number of boards for both for-profit corporations and for not-for-profits.

Q. Okay. Could you tell me what those boards are?

A. I have served on the board of Parsons Brinckerhoff, an engineering consulting firm located in New York, located in New York. I have served on the board of Vargo, which is a cosmetic company with offices in New York and in Paris, France. I have served on the board of governors of the American Bar Association. I serve on the board of trustees of the national association -- that's not right. They call it the judicial college, American Judicial College I think they call it now. I serve on the board of the national association of victims attorneys, and of the victims association in conjunction with that. I serve on the board of visitors at Tulane law school. I serve on the board of visitors at American University law school. I think that's it.

Q. Are all of those board positions paying positions?

A. Part of them are.

Q. Could you tell me which ones of them are paying positions?

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1 A. I'm paid by Vargo and I'm paid by Parsons  
2 Brinckerhoff and I'm paid by American University and  
3 I am paid by Tulane.

4 Q. Okay. Are any of those positions  
5 full-time employment positions?

6 A. No, sir.

7 Q. Have you had any full-time employment  
8 positions since you left the Trust in November of  
9 1991?

10 A. No, sir.

11 Q. Since you left the Trust in November of  
12 1991, have you had any contacts with people who were  
13 involved in Trust activities?

14 MR. STENGEL: Are you excluding our  
15 obvious contact in connection with this deposition.

16 BY MR. BERNICK:

17 Q. Yes. Before you met Mr. Stengel in  
18 connection with this deposition.

19 A. I have had social contacts with some of  
20 the employees at the Trust. Dinner. Lunch, some of  
21 those kinds of things.

22 Q. Okay. Anything else?

23 A. No.

24 Q. Have you ever been consulted, have you,  
25 since you left in November 1991 been consulted by the

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1 seeking employment or seeking board positions?

2 A. No.

3 Q. Have you given as a reference anybody who  
4 acted as a trustee of the Manville Trust, again, in  
5 seeking employment or board positions?

6 A. No.

7 Q. Have you given as a reference or had any  
8 contact with anybody who has represented asbestos  
9 claimants in claims against the Trust? Have you used  
10 any of those lawyers as references or had contact  
11 with them in connection with efforts to obtain  
12 employment or board positions?

13 A. No.

14 Q. So really since November of 1991, you have  
15 had no professionally-related contacts with trustees  
16 of the trust or with lawyers who are prosecuting  
17 claims against the Trust?

18 A. The answer to that is no.

19 Q. You have had -- no, you have not had such  
20 contacts?

21 A. I have no recollection of any such  
22 contacts.

23 Q. Okay. When you spoke with Mr. Austern in  
24 the spring, did he call you or did you call him?

25 A. He called me.

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1 Trust in connection with any Trust activities or  
2 functions?

3 A. No.

4 Q. The social contacts that have you had  
5 since you left the Trust, with whom are have those  
6 contacts been?

7 A. David Austern, Pat Houser, Karen, whose  
8 last name I can't remember, Dennis Feely. I guess  
9 that's it.

10 Q. With respect to any of these four people,  
11 do you regard any of these people as being basically  
12 friends of yours, social friends?

13 A. I'm friendly with those people.

14 Q. I guess what I'm just trying to find out  
15 is these contacts, how regular have they been?

16 A. I haven't seen anyone from the Trust in  
17 two years. Until this meeting.

18 Q. When did you first learn that the Trust  
19 had filed this suit?

20 A. It must have been in the spring when David  
21 called and we talked, they told me that, it would be  
22 the spring of 1999.

23 Q. Okay. At any point in time since you  
24 left the Trust in November of 1991, have you given as  
25 a reference anybody from the Trust in connection with

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1 Q. Okay. And could you tell me just  
2 generally what the subject of that discussion was?

3 A. He asked me if I had any Trust documents.

4 Q. Okay. What did you tell him?

5 A. No.

6 Q. Did anything else get discussed during the  
7 course of that call?

8 A. If we did, it was the socializing sort of  
9 thing, how are your children and is your husband's  
10 health good. That sort of thing.

11 Q. Okay.

12 A. No business.

13 Q. Any further contacts that you have had  
14 since then with people who either are affiliated with  
15 the Trust or were affiliated with the Trust, again  
16 setting aside Mr. Stengel?

17 A. I don't believe so.

18 Q. When did you first learn that your  
19 deposition was going to be taken?

20 A. I think I had a voicemail asking me if I  
21 could appear for a deposition about three weeks ago  
22 maybe.

23 Q. Would it be fair to say that after your  
24 contact with Mr. Austern in the spring concerning  
25 documents, that voicemail three weeks ago was the

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1 next contact that you had relating to this case or  
2 the Trust?  
3 A. I believe that's right.  
4 Q. Okay. And after you got the voicemail,  
5 did you have any further discussions with Mr. Austern  
6 or other people involved in the trust?  
7 A. I called David to learn what the, what his  
8 message was about and he asked me if I could be  
9 available for a deposition today. I agreed to do so.  
10 That's about three weeks ago, I think. I would have  
11 to go back and look at the phone records to know that  
12 answer. I'm not sure.  
13 Q. Any other contacts that you have had in  
14 connection with this case, other than any contacts  
15 with Mr. Stengel?  
16 A. I think there was only one other  
17 conversation with David, and that was just more about  
18 the mechanical details of what was happening.  
19 Q. When did you meet Mr. Stengel for the  
20 first time?  
21 A. Yesterday.  
22 Q. That's the first time you ever met  
23 Mr. Stengel?  
24 A. That's right.  
25 Q. And how long was your meeting with him

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1 yesterday?  
2 A. I think it began around 12:30 and it was  
3 over about 3:30.  
4 Q. Are you -- are you or people acting for  
5 you compensating Mr. Stengel for this time here  
6 today?  
7 A. I have no knowledge of that.  
8 Q. Is there anything that you have done to  
9 formally retain Mr. Stengel as your lawyer?  
10 A. Mr. Stengel represents me and the Trust.  
11 Q. I understand that he represents the Trust.  
12 I guess really what I'm asking you, Miss Smith, is  
13 why do you say that he represents you?  
14 A. I asked him to represent me.  
15 Q. And when you asked him, was that  
16 yesterday?  
17 A. Yes, sir.  
18 Q. Okay. Was that something that he  
19 suggested?  
20 A. No, sir.  
21 Q. And when you had that discussion, was  
22 there any discussion of whether you would compensate  
23 Mr. Stengel for his time?  
24 A. That has not been discussed.  
25 Q. Do you have any, do you have your own

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1 private lawyer, Miss Smith?  
2 A. Yes, sir, I do.  
3 Q. And who is that?  
4 A. Mr. Ben Weaver.  
5 Q. Is he sitting here also?  
6 A. Yes, sir.  
7 Q. And Mr. Weaver, are you paying him for his  
8 time here?  
9 A. He will be compensated for his time.  
10 Q. Does Mr. Weaver have any, to your  
11 knowledge, have any professional relationship with  
12 the Trust or anybody associated with the Trust?  
13 A. Not to my knowledge.  
14 Q. So he has been your private attorney for  
15 some time?  
16 A. He has represented me before.  
17 Q. Okay. In connection with your meeting  
18 with Mr. Stengel yesterday, was that the only meeting  
19 or discussion that you have had with anybody  
20 concerning what your testimony might be in connection  
21 with this deposition?  
22 A. Yes, sir.  
23 Q. I'm really just asking you whether you had  
24 any discussions or meetings with Mr. Weaver  
25 concerning what your testimony would be?

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1 A. Oh. No, sir.  
2 Q. At any point in time all the way up to  
3 today, have you ever had any contact with anybody  
4 representing the Trust or working with the Trust as  
5 to what your testimony might be and what you would  
6 say in this case?  
7 A. No, sir.  
8 Q. Did anyone from the Trust contact you  
9 during the course of this, and prior to your meeting  
10 with Mr. Stengel, to talk about what you would say  
11 concerning tobacco documents or tobacco evidence?  
12 A. No, sir.  
13 Q. Are you aware that pleadings have been  
14 filed in this case which make representations  
15 concerning what you are knowledgeable about or what  
16 you would say concerning tobacco documents? Did  
17 anyone tell you that?  
18 A. Would you rephrase that? I don't  
19 understand what you are saying.  
20 Q. Yes. It wasn't a good question. Were you  
21 told that pleadings have been filed in this case by  
22 the Trust which describe what you would say  
23 concerning the effect of tobacco documents on  
24 decisions that have been made by the Trust over time?  
25 Did anyone ever tell you that?

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1 A. No.  
 2 MR. STENGEL: Object to the form of the  
 3 question.  
 4 THE WITNESS: Thank you. I don't  
 5 understand what you are asking. I'm sorry.  
 6 BY MR. BERNICK:  
 7 Q. Pleadings have been filed in this case by  
 8 the Trust. They have filed papers in this case. And  
 9 those papers describe certain facts which the Trust  
 10 believes that you would testify to concerning the  
 11 effect of tobacco documents. Now, all I'm asking is  
 12 did anyone ever tell you that?  
 13 A. No, sir.  
 14 Q. That those pleadings would be filed,  
 15 statements would be made by the Trust about what your  
 16 testimony might be?  
 17 A. No, sir.  
 18 Q. Okay. In connection with your meeting  
 19 with Mr. Stengel yesterday, did you review any pieces  
 20 of paper, or any documents of any kind?  
 21 A. No, sir. I did not.  
 22 Q. Did you review any testimony of any kind?  
 23 A. No, sir. I did not.  
 24 Q. Did you discuss what other people already  
 25 had testified to in this case, that is, what

Page 20

1 A. Yes.  
 2 Q. And what did he say about his testimony?  
 3 MR. STENGEL: I'm going to instruct the  
 4 witness not to answer the question because I think  
 5 the discussion of testimony arose in the context of  
 6 providing legal advice to the witness.  
 7 BY MR. BERNICK:  
 8 Q. Is Mr. Austern your counsel? Personal?  
 9 A. Yes.  
 10 Q. When did you retain him?  
 11 A. We discussed it yesterday.  
 12 Q. You must be clear. You told Mr. Austern  
 13 yesterday that you wanted him to represent you in  
 14 connection with your testimony?  
 15 A. Yes.  
 16 Q. Who else have you asked to represent you  
 17 in connection with your testimony other than  
 18 Mr. Stengel, Mr. Weaver, Mr. Austern?  
 19 A. No one.  
 20 Q. I want to go back to the question of  
 21 Mr. Austern's statements to you regarding, and I only  
 22 want to you focus on what Mr. Austern said concerning  
 23 his testimony. I want you to describe for me what  
 24 Mr. Austern said to you concerning his testimony.  
 25 MR. STENGEL: Same instruction to the

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1 Mr. Austern had testified to and what Miss Houser had  
 2 testified to?  
 3 MR. STENGEL: Counsel, I'll let the  
 4 witness respond with the understanding that this is  
 5 not in any way, shape, or form a subject matter  
 6 waiver of privilege because we are getting to the  
 7 edge of what I would consider to be privileged  
 8 communication.  
 9 BY MR. BERNICK:  
 10 Q. Do you understand the question?  
 11 A. Let's try again.  
 12 Q. Any time during the course of the meeting  
 13 yesterday, that is the only meeting that you have had  
 14 concerning your testimony, correct?  
 15 A. Yes.  
 16 Q. At any time during the course of that  
 17 meeting, was there any discussion of the testimony  
 18 that Mr. Austern has given in this case?  
 19 A. Yes.  
 20 Q. Was Mr. Austern present at this meeting?  
 21 A. Yes.  
 22 Q. Who else was there besides Mr. Stengel,  
 23 Mr. Weaver, and Mr. Austern?  
 24 A. That's all.  
 25 Q. Did Mr. Austern describe his testimony?

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1 witness.  
 2 BY MR. BERNICK:  
 3 Q. Are you going to follow that instruction,  
 4 Miss Smith?  
 5 A. I'm sorry. What did you say?  
 6 Q. I think he's instructed you. He's given  
 7 you instruction, maybe you want to make it clear to  
 8 Jim what --  
 9 MR. STENGEL: I will instruct the witness  
 10 not to respond to that question on the basis of  
 11 attorney-client privilege.  
 12 BY MR. BERNICK:  
 13 Q. Was there any discussion yesterday during  
 14 the course of the meeting that had you concerning the  
 15 testimony of Ms. Houser?  
 16 A. No.  
 17 Q. Was there any discussion concerning the  
 18 testimony of Mr. Macchiarola, Frank Macchiarola?  
 19 A. No.  
 20 Q. Do you know Mr. Macchiarola?  
 21 A. Yes.  
 22 Q. Have you had any contact with him  
 23 concerning this case?  
 24 A. No.  
 25 Q. What about Miss Houser? Are you aware of

Page 22

1 the fact that she did give a deposition in this case?  
2 A. I was told that.  
3 Q. Yesterday?  
4 A. Yes.  
5 Q. Have you had any contact with Ms. Houser  
6 about her testimony?  
7 A. No.  
8 Q. I want to spend a little bit of time  
9 talking about your personal background.  
10 A. Um-hmm.  
11 Q. You have to respond orally. Could you  
12 just tell us a little bit about your educational  
13 background?  
14 A. I received my first degree from Perdue  
15 University with a BS in pharmacy. My second degree  
16 was from University of Indiana with JD and I received  
17 an LLM from University of Texas Law School of Austin.  
18 Q. When was that?  
19 A. It must have been about 1976, I believe.  
20 Q. After you graduated from law school, what  
21 did you do next?  
22 A. Became a law professor.  
23 Q. Where was that?  
24 A. My first job was at Nova University in  
25 Fort Lauderdale.

Page 23

1 Q. Okay. I'm sorry. Go ahead.  
2 A. Indiana University in Indianapolis, and  
3 then American University in Washington, D.C., and I  
4 taught several months, I'm sorry, it must have been  
5 about eight months in England, at Oxford.  
6 Q. And when was that?  
7 A. 1980, approximately.  
8 Q. These different positions that you have  
9 just described for us, over what period of time did  
10 they extend? You told us that you got your first  
11 position in 1976. Over what period of time did that  
12 position and the succeeding positions last?  
13 A. I was on the faculty at Nova from 1976,  
14 '75, '76, whatever that was until I left there in  
15 '81. I taught summers in Indianapolis at Indiana  
16 University, and I taught at Oxford during that  
17 period, then I came on the faculty and went into the  
18 dean's office in 1981 at American University and I  
19 stayed there until 1984, I guess, something like  
20 that.  
21 Q. Okay. And what happened in 1984?  
22 A. I was recruited and became the executive  
23 director of American Trial Lawyers Association.  
24 Q. How did that come about?  
25 A. I was offered the job and I took it.

Page 24

1 Q. I mean, do you know why it is that you  
2 came to be offered that position?  
3 A. I testified before the Senate of the  
4 United States about a products liability bill and the  
5 officers of the outlet happened to be in the back  
6 room. They heard my testimony. They invited me to  
7 lunch. We had negotiations and they offered me a  
8 job.  
9 Q. Okay. And you took that position in 1984?  
10 A. I think that's about right.  
11 Q. And you held that position until you came  
12 to work for the Manville Trust in October of '87?  
13 A. Yes, sir.  
14 Q. Is it true that you basically had  
15 continuous full-time employment from 1976, when you  
16 took your position at Nova University all the way up  
17 through and until the time that you joined the  
18 Manville Trust in October of '87, or were there  
19 periods of time during that period where you were  
20 employed only part-time?  
21 A. No. I was employed full time. I wasn't --  
22 Q. So -- I'm sorry. Is that right?  
23 A. Yes.  
24 Q. And likewise, you have obviously had a  
25 full-time position at the Trust from October of '87

Page 25

1 until November of '91, correct?  
2 A. That's right.  
3 Q. Could you tell me a little bit about what  
4 your duties and responsibilities at ATLA were?  
5 A. I was the executive director. It was my  
6 job to run the place.  
7 Q. Is it true that the American Trial Lawyers  
8 Association is basically an association that  
9 represents plaintiffs lawyers?  
10 A. Yes.  
11 Q. Is it true that it is far and away the  
12 largest and most prominent such association?  
13 A. Yes.  
14 Q. Could you describe for me the kinds of  
15 activities that ATLA pursued while you were there,  
16 just generically the kind of activities that ATLA  
17 pursued on behalf of plaintiffs lawyers throughout  
18 the United States?  
19 A. We had a large department of education for  
20 continuing education of attorneys. We had a very  
21 active political arm with a large PAC. We had a  
22 very active legislative arm. And then we provide the  
23 typical normal services of membership that any  
24 organization provides from credit cards to trips and  
25 travel services and that sort of thing.

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1 Q. When you say the political arm, what does  
2 that refer to?  
3 A. ATLA is a very prominent lobbying  
4 organization in Washington, D.C.  
5 Q. Could you tell me roughly the budget of  
6 ATLA during the period of time, annual budget of ATLA  
7 during the period of time when you were there as the  
8 executive director?  
9 A. About \$20 million a year. That does not  
10 include the PAC. That's the operational budget.  
11 Q. What about the PAC?  
12 A. PACs vary depending on where you are in an  
13 election cycle.  
14 Q. Right?  
15 A. It would be as little as a few hundred  
16 thousand dollars at any given moment. It could be  
17 several million.  
18 Q. Do you know roughly how much ATLA  
19 contributed to political campaigns or political  
20 parties during the year 1987?  
21 A. I don't remember.  
22 Q. During the course of your different --  
23 I'll withdraw that and rephrase it a little  
24 differently.  
25 During the course of your work for ATLA,

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1 employment at ATLA, you came to know Pat Houser  
2 pretty well?  
3 A. Yes, sir.  
4 Q. And were you responsible really for her  
5 being hired at the Manville Trust?  
6 A. Yes, sir.  
7 Q. Okay. I take it then that you had regard  
8 for her truthfulness and integrity, thought she was a  
9 person who told the truth and had personal integrity?  
10 A. Yes, I do.  
11 Q. Do you still have that view today?  
12 A. I certainly do.  
13 Q. She has said that you were a close  
14 personal friend of two of the trustees, that is  
15 Brother Hare and Dan Fogel.  
16 A. That's right.  
17 Q. Would that be an accurate statement?  
18 A. Yes.  
19 Q. And was that true prior to the time that  
20 you joined the Manville Trust?  
21 A. Yes.  
22 Q. Were you also personal friends with any of  
23 the asbestos lawyers that you have mentioned, either  
24 Scotty Baldwin or Ron Motley?  
25 A. I was a personal friend of Scotty Baldwin.

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1 did you have contact with anybody who later became or  
2 at any time became a trustee of the Manville Trust?  
3 A. Yes.  
4 Q. Who did you have contact with while you  
5 were at ATLA?  
6 A. Francis Hare.  
7 Q. Who else?  
8 A. Perhaps Dan Fogel. I knew Dan Fogel, but  
9 I'm not sure that it's through ATLA that I knew him.  
10 Q. Did you have any contacts while you were  
11 at ATLA with people who, employers who had brought  
12 lawsuits or claims on behalf of asbestos claimants?  
13 A. Yes.  
14 Q. Who?  
15 A. Scotty Baldwin from Marshall, Texas was  
16 president of ATLA while I was executive director and  
17 he had asbestos cases in his firm. Ron Motley was an  
18 officer of ATLA for a short time while I was there.  
19 He had asbestos cases. Fred Baron from Dallas, Texas  
20 was active in ATLA in the education area at one  
21 point, so I did not know him well, but I knew him,  
22 and Dick Gerny, who is a former president of ATLA who  
23 was well before my time but I did know him. I didn't  
24 know any of the other asbestos lawyers at all.  
25 Q. I take it that during the course of your

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1 Q. Obviously I think from what you have said  
2 it would be fair to say that both Brother Hare and  
3 Dan Fogel did have strong ties to the plaintiff's bar  
4 prior to the time that they became trustees with the  
5 Manville Trust. Would that be accurate?  
6 A. I think so.  
7 Q. Okay. Were there any other trustees,  
8 Manville Trustees who had ties to the plaintiff's bar  
9 prior to the time that they became trustees of the  
10 Trust?  
11 A. I have no knowledge.  
12 Q. How did it come to pass that you were  
13 recruited to become the executive director of the  
14 Manville Trust?  
15 A. I got a phone call from a professional  
16 headhunter.  
17 Q. Okay. Do you know how that headhunter  
18 came to have your name?  
19 A. I have no knowledge of how he had my name,  
20 no.  
21 Q. Is it true that in point of fact it was  
22 Brother Hare who recommended you for the position?  
23 A. That's possible. I don't know that for a  
24 fact.  
25 Q. Let's see if we can find something that --



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1 do you remember that the head hunter was named  
2 Russell Reynolds Associates?  
3 A. Well, I have had contact with them. I  
4 don't recollect that that's who that was at the time.  
5 I don't know.  
6 Q. Okay. Were you ever told that Russell  
7 Reynolds Associates was given your name by Francis  
8 Hare? Did you ever learn that?  
9 A. I don't know that.  
10 Q. You must have had some impression at  
11 least, Miss Smith, about why it is that they came all  
12 of a sudden called Marianna Smith to fill this  
13 position with Manville Trust?  
14 A. If you are asking me did I assume that  
15 that's possible, yes. But I got phone calls from  
16 headhunters often. I still do. I don't know where  
17 they came from.  
18 Q. Well, did you ever have any conversations  
19 with Brother Hare where he told you or you discussed  
20 the fact that he had had this contact with a  
21 headhunter and basically to give him your name?  
22 A. I have no clear recollection of that  
23 conversation.  
24 Q. You don't have a recollection one way or  
25 the other?

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1 A. No.  
2 Q. You don't have any recollection of ever  
3 having discussed with Brother Hare how it came to  
4 pass that you were hired as the executive director?  
5 A. Are you -- would you --  
6 Q. Sure. I'm sorry. Let me try to do it  
7 again. I'm just asking you just most generally, you  
8 have no recollection of any conversation with Brother  
9 Hare about how it came to pass that you were  
10 recruited to become the executive director, is that  
11 what you are saying?  
12 A. Perhaps I have -- I have a general  
13 impression in my mind that because Brother was one of  
14 the trustees, I was, my name came forward. I may  
15 have known that at one time. As I sit here, I don't  
16 have a clear recollection of that. But I have a  
17 general impression that he would have made that  
18 suggestion, yeah.  
19 Q. Okay. You came to be hired as the  
20 executive director, you came from ATLA, right?  
21 A. That's right.  
22 Q. Brother Hare, an active member of ATLA,  
23 became a trustee, correct?  
24 A. Um-hmm, that's right.  
25 Q. Dan Fogel became a trustee, correct?

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1 A. That's right.  
2 Q. You in turn hired other people to comprise  
3 your staff, correct?  
4 A. That's right.  
5 Q. And when you turned to hire other people  
6 to comprise your staff, again you went to the ATLA  
7 organization, correct?  
8 A. I brought people with me who had worked  
9 for me there as when I went to ATLA, I took people  
10 with me who had worked for me before.  
11 Q. If you would focus on my question. When  
12 you came to work for the Manville Trust, you wanted  
13 to hire your key people, you hired people that had  
14 been employed at ATLA, correct?  
15 A. I hired some.  
16 Q. Well, Mr. Austern, you hired from ATLA,  
17 correct?  
18 A. Um-hmm.  
19 Q. Respond orally.  
20 A. Yes.  
21 Q. And Miss Houser you hired from ATLA?  
22 A. Yes.  
23 Q. Would it be fair to say, Ms. Smith, that  
24 both in the composition of the board of trustees and  
25 in the composition of the higher levels of the

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1 Manville Trust, an effort was made to bring people on  
2 board who had, who enjoyed close relationships with  
3 the Plaintiffs bar?  
4 MR. STENGEL: I'm going to object to the  
5 question, Mr. Bernick. You have got, it's hopelessly  
6 compound. It also lacks foundation. You haven't  
7 specified who was making the effort which may be  
8 different from the perspective of a trustee versus an  
9 employee that this witness had a role in hiring. So  
10 you may want to try and unpack that question.  
11 BY MR. BERNICK:  
12 Q. I'll put it to you real simply. Did you  
13 -- when you came on board with the Manville Trust and  
14 hired your senior staff, was it your understanding  
15 that the trust essentially was making an effort to  
16 assure that it would be populated with people who  
17 enjoyed close relationships with the plaintiff's bar?  
18 A. No.  
19 Q. That was not an effort that was being  
20 made?  
21 A. No.  
22 Q. You don't recall that the trust itself in  
23 announcing your appointment stated publicly that your  
24 appointment was an indication that the board of  
25 trustees is anxious for a positive working

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1 relationship with the claimants and their attorneys?  
2 A. I don't remember that phrase. No.  
3 Q. Do you remember any kind of similar phrase  
4 or expression or policy that the trust had, that is,  
5 to hire people who had ties with the plaintiff's bar  
6 because the board was anxious for a positive working  
7 relationship with the claimants and their attorneys?  
8 A. No.  
9 Q. After all the trustees for the original  
10 trust were appointed and the senior positions of the  
11 staff were also appointed, in point of fact, the way  
12 that it turned out was that people in significant  
13 positions at the Trust had had strong historical  
14 relationships with the plaintiff's bar, correct?  
15 MR. STENGEL: Same objection as to  
16 compound. Lacks foundation.  
17 BY MR. BERNICK:  
18 Q. Was there any doubt but that you were  
19 knowledgeable about who the Trustees were, Ms. Smith?  
20 A. Did I know the Trustees? Of course I knew  
21 the Trustees.  
22 Q. And you knew their personal backgrounds,  
23 at least so far as Brother Hare and Mr. Fogel are  
24 concerned, correct?  
25 A. I knew the two of them prior to the time,

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1 in ATLA.  
2 Q. Was he a member of ATLA?  
3 A. Maybe, I guess. I don't know.  
4 Q. Is there any doubt in your mind that all  
5 four of those people had strong and close  
6 relationships with the plaintiff's bar prior to the  
7 time that they became affiliated with the Trust?  
8 A. Oh, there is no doubt about that.  
9 Q. And isn't it true that in your case in  
10 particular, there were people who, as you later put  
11 it, thought your appointment as executive director  
12 meant that the fox was guarding the hen house? Do  
13 you remember ever saying that?  
14 A. Yes, I do.  
15 Q. And when you said that in 1988 while you  
16 were executive director of the trust, what was it  
17 that you were talking about?  
18 A. I was talking about the positions of the  
19 co-defendants.  
20 Q. And the perception that they had when you  
21 said fox is guarding the hen house, what was it that  
22 you were expressing?  
23 A. Their concern that someone from ATLA was  
24 now the executive director of the Trust.  
25 Q. And what was the concern, as you

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1 but at the time I took the job, I knew all of them.  
2 Q. Okay. And you also knew the personal  
3 backgrounds of Mr. Austern and Mr. Houser because you  
4 hired them, right?  
5 A. That's right.  
6 Q. All of those different people that I have  
7 named all enjoyed historical close relationships with  
8 plaintiff's lawyers and plaintiff's lawyers  
9 associations, correct?  
10 MR. STENGEL: Compound.  
11 BY MR. BERNICK:  
12 Q. So if that's not true with any one of  
13 those people, you let me know, okay.  
14 A. Those four people you mentioned?  
15 Q. Well --  
16 A. Are we talking about those four people and  
17 me as five.  
18 Q. And you as five, right.  
19 MR. STENGEL: And then you are asking  
20 simultaneously as to plaintiffs' lawyers and  
21 plaintiffs' associations.  
22 BY MR. BERNICK:  
23 Q. Right. Both of those things. Every  
24 single one of them at close --  
25 A. Fogel was not, Fogel was not an activist

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1 understood it expressed from the time that you were  
2 executive director?  
3 A. As I understood it, they felt that a  
4 plaintiff-oriented person was doing something that  
5 they -- that was their perception, as I understood  
6 it.  
7 Q. I didn't understand what the perception  
8 was as you understood it?  
9 A. A plaintiff-oriented person was running a  
10 defense organization.  
11 Q. And I asked you, just put this to you  
12 pretty squarely, wasn't it true that the reason that  
13 a plaintiff, a person with a plaintiff's background  
14 was running the Trust organization was that the board  
15 of trustees of the trust wanted to develop a good,  
16 close working relationship with the plaintiff's  
17 lawyers who were making claims against the Trust?  
18 Wasn't that the effort that the board was making in  
19 hiring you?  
20 A. I would like to think they hired me for a  
21 lot of other good reasons.  
22 Q. I'm just asking you whether that was one  
23 of the policy reasons that you understood?  
24 A. Yes.  
25 Q. Is it also true that to that extent, the

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1 Trust -- strike that. Is it also true that as the  
2 Trust went forward in developing its policies and  
3 procedures for resolving claims, that maintaining a  
4 good relationship with the plaintiff's lawyers was  
5 one of the trust's top priorities?  
6 A. It was one of the priorities.  
7 Q. Was that one of the particular priorities  
8 that you had personally, that is, to use your prior  
9 historical relationships with people within the  
10 plaintiff's bar in order to be able to execute on  
11 Trust obligations and duties?  
12 A. Perhaps.  
13 Q. Is there any doubt about that in your  
14 mind?  
15 A. But it was one of many.  
16 Q. Is there any doubt about, is there any  
17 doubt in your mind that that was one of your own  
18 personal priorities in your own activities, that is,  
19 to maintain and take advantage of the strong personal  
20 relationships that you had developed with people  
21 within the plaintiff's bar?  
22 A. It was a priority.  
23 Q. Let's talk a little bit about the  
24 liability that the trust, the Manville Trust assumed.  
25 The Trust assumed Manville, Johns Manville's

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1 liability for asbestos-related claims, correct?  
2 A. Yes.  
3 Q. Is it true that prior to the time that  
4 Manville went into Chapter 11, as you understood it,  
5 literally tens of thousands of lawsuits had been  
6 filed against the Manville Corporation?  
7 A. As I understand it, there was about 20,000  
8 lawsuits.  
9 Q. Is it further your understanding that the  
10 claims brought against Manville prior to its  
11 bankruptcy filing in 1982 that those claims included  
12 cases that were brought by smokers?  
13 A. Yes.  
14 Q. Is it true that smokers sued the Manville  
15 Corporation even after the effects of smoking on  
16 asbestos-related illness had been published in the  
17 scientific literature?  
18 A. Yes.  
19 Q. Now, when smokers sued Manville -- strike  
20 that. When smokers filed lawsuits for  
21 asbestos-related injuries prior to 1982,  
22 overwhelmingly, they filed those lawsuits against  
23 asbestos companies, correct?  
24 A. Would you say that again. I didn't  
25 understand.

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1 MR. STENGEL: Objection.  
2 BY MR. BERNICK:  
3 Q. Yes. I guess inartfully put question.  
4 When smokers filed lawsuits prior to 1982, they  
5 didn't name the tobacco companies. They just named  
6 Manville and asbestos companies, true?  
7 A. Yes.  
8 Q. And is it also true that during the  
9 Manville bankruptcy, Manville ultimately agreed that  
10 it was liable for lung cancer, asbestosis, and  
11 pleural disease claims brought by smokers, even  
12 though they had a smoking history?  
13 A. That -- I guess the answer is yes.  
14 Q. In other words, Manville agreed in its  
15 bankruptcy to be liable for those disease claims,  
16 regardless of whether the claimant was a smoker or  
17 not a smoker, correct?  
18 A. Yes.  
19 Q. And Manville agreed to pay those claims in  
20 full in the bankruptcy plan regardless of people,  
21 whether people were smokers or nonsmokers, correct?  
22 A. They agreed to pay those claims in full.  
23 I think the answer to that is yes.  
24 Q. Would you also agree with me that the  
25 scope of injuries, that the extent of injuries caused

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1 by exposure to Manville asbestos was vast?  
2 A. Yes.  
3 Q. Literally hundreds of thousands of people  
4 had been injured by exposure to Manville asbestos.  
5 Would you agree with that?  
6 A. I don't know the number.  
7 Q. Is that consistent with your own  
8 understanding that it's in the thousands upon  
9 thousands, whatever the particular number is?  
10 A. It is thousands, that's for sure.  
11 Q. Okay. Well, in point of fact, isn't it  
12 true that even during the period of time that you  
13 were at the Trust in excess of 100,000 claims were  
14 filed against the Manville Trust by people who had  
15 been exposed to Manville asbestos?  
16 A. There were that many claims filed.  
17 Q. I'm sorry.  
18 A. There were that many claims filed. Yes.  
19 Q. And by any definition or standard, the  
20 injuries that those claims reflected, injuries from  
21 Manville asbestos, those injuries were vast, correct?  
22 A. Yes.  
23 Q. Okay. Is it also true that in your own  
24 estimation, Manville's conduct, historical conduct  
25 with regard to people exposed to its product, that

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1 its conduct was willful?  
2 A. Yes.  
3 Q. Mr. Austern testified, I will tell you,  
4 that in his view, Manville, Manville's conduct was  
5 not only willful, it was outrageous. Do you agree  
6 with that?  
7 A. I'm not sure I would use the word  
8 outrageous, because I'm not sure that's a legal term,  
9 but it was I think, what I might call willful and  
10 wanton.  
11 Q. In your own personal view it was an  
12 outrageous conduct that a company with this product  
13 could cause injury willfully on that scope?  
14 A. Would you clear up that question, please.  
15 Q. Yes. In your own personal view you said  
16 it was willful, it was wanton, and it caused vast  
17 injury in thousands upon thousands of people. Do you  
18 recall that?  
19 A. Yes.  
20 Q. I'm just asking you within your own  
21 personal estimation at the time that you were  
22 executive director in your own estimation, was that  
23 outrageous?  
24 A. Yes.  
25 Q. Is it also true that even after the Trust

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1 with the perspective of claimants and their lawyers  
2 on Manville's liability for what it had done?  
3 A. Yes.  
4 Q. Was that something that fell within the  
5 purview of your duties and responsibilities, that is,  
6 to become familiar with the perspective of Plaintiffs  
7 and their lawyers with regard to Manville's  
8 liability?  
9 A. It was one of the things in my job, yes.  
10 Q. Basically, you had to understand what the  
11 claims were and what people thought about those  
12 claims in order to be able to resolve those claims,  
13 correct?  
14 A. Yes.  
15 Q. And would it be fair to say that the  
16 animosity reflected in these claims, the animosity  
17 against Manville of these claimants and their lawyers  
18 was profound?  
19 A. I'm not sure that I would have selected  
20 the word profound, but the answer is yes.  
21 Q. In essence?  
22 A. Yes.  
23 Q. From the plaintiff's perspective, that is,  
24 from the perspective of the claimants, would it be  
25 fair to say that in their view, Manville could pay

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1 began to get going, to pursue its activities, that  
2 yet more historical evidence emerged regarding  
3 Manville's conduct?  
4 A. Yes.  
5 Q. Do you recall in the first part of 1988  
6 more documents from Manville came to light?  
7 A. Yes.  
8 Q. Do you recall that Mr. Austern went to  
9 take a look at some of those documents?  
10 A. Yes.  
11 Q. Do you recall that the board of trustees  
12 of the Trust became very worried that these documents  
13 were yet more evidence of Manville's outrageous  
14 conduct and they were worried that it would have an  
15 effect on the ability to resolve claims?  
16 A. Yes.  
17 Q. Is it also your memory that the Trust  
18 determined as a result of reviewing those new  
19 documents that the real reason why Manville filed for  
20 Chapter 11 was that it wanted to avoid punitive  
21 damages?  
22 A. Yes.  
23 Q. Let me take a step back. During the  
24 course of your employment as executive director of  
25 the Manville Trust, I take it you became familiar

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1 and pay and pay on asbestos exposure claims and run  
2 out of money and there still wouldn't be enough money  
3 to pay for the value of those claims?  
4 A. Would you rephrase that? I don't  
5 understand what you mean.  
6 Q. Sure. The perspective of the claimants  
7 and their lawyers when you were executive director in  
8 1988 was that the Manville's liability was so vast  
9 that Manville could pay on claims and keep on paying  
10 and paying and paying, paying its own liability and  
11 it still would not have enough money to fully  
12 compensate for the injuries that it had caused. Was  
13 that the perspective of the claimant's lawyers when  
14 you were executive director?  
15 A. Yes.  
16 Q. Was that your own view? Manville just  
17 didn't have enough money to pay even for its own  
18 liability on its own injuries?  
19 MR. STENGEL: This is in 1988?  
20 BY MR. BERNICK:  
21 Q. 1988.  
22 A. In 1988, no.  
23 Q. So you thought that Manville in 1988 had  
24 enough money to fully pay out all of its liability  
25 for all of the injuries that it had caused? Is that

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1 your view?  
2 A. In 1988. 1988. 1988, we had 17,000  
3 claims.  
4 Q. Well, but 17,000 you knew was not the end  
5 of the claim queue?  
6 A. Of course I knew that.  
7 Q. 1988 it was expected that there wouldn't  
8 be 17,000, there would be far more claims, correct?  
9 A. 1988 there was expected to be 50,000.  
10 Q. Well, in 1988 in point of fact during the  
11 plan of reorganization -- strike that, during the  
12 bankruptcy, the estimates of numbers of claims that  
13 were assumed was between 83 and 100,000 claims,  
14 correct?  
15 A. The maximum was put at 100,000.  
16 Q. Well, the range that was estimated for  
17 purposes of Manville plan of reorganization was  
18 between 83 and 100,000 claims.  
19 A. I don't recollect that number.  
20 Q. Do you have reason to dispute that number?  
21 A. No, I don't, but I don't recollect it.  
22 Q. All I'm saying that in 1988, given the  
23 extent of the claims that were expected to be filed,  
24 did you believe that Manville had enough money to pay  
25 those claims in full?

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1 A. I didn't know.  
2 Q. Let's talk a little bit more about 1988.  
3 A trust was assigned and assumed responsibility for  
4 Manville's liability for asbestos claims, right?  
5 A. Yes, sir.  
6 Q. By any account, the expectation is that  
7 there would be tens of thousands of those claims  
8 filed against the Trust, correct?  
9 A. Yes, sir.  
10 Q. Isn't it true that litigation was not a  
11 practical means of resolving those claims?  
12 A. That's right.  
13 Q. In fact, isn't it true that in 1988, even  
14 before the Trust formally opened its doors, you knew  
15 that if litigation became the means of resolving  
16 claims brought by Manville asbestos claimants, if it  
17 became the means of resolving those claims, it would  
18 destroy the Trust, isn't that your view?  
19 MR. STENGEL: Object to the form.  
20 BY MR. BERNICK:  
21 Q. I'm sorry. Did you answer the question?  
22 I didn't hear.  
23 A. Try me again, please.  
24 Q. Okay. Isn't it a fact that in 1988, even  
25 before the Trust formally opened its doors for

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1 operations, you came to the view that if litigation  
2 became the way the claims were resolved, that that  
3 would destroy the Trust?  
4 A. I'm not sure I used the word destroy, but  
5 I might have. Yes, it would be very damaging.  
6 Q. Do you recall giving an interview with the  
7 New Jersey Trial Lawyer in August of 1988?  
8 A. Yes.  
9 Q. I'm going to just read from this interview  
10 and you let me know if this refreshes your  
11 recollection. If necessary, we can just mark this as  
12 an exhibit.  
13 Do you recall basically being of the view  
14 and expressing the view in August of 1988 that the  
15 biggest threat to the Manville Trust is that we can  
16 be put in the position that we are court date driven  
17 and we will cease to be a settlement vehicle and  
18 become a litigation preparation vehicle and when that  
19 happens, the mission of that trust is gone, it's  
20 destroyed.  
21 Do you recall having the view even before  
22 the Trust actually, the plan was actually consummated  
23 and the Trust formally opened its doors that if  
24 litigation became the means for resolving claims,  
25 that that would destroy the Trust?

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1 MR. STENGEL: I'm going to object,  
2 counsel, that's a mischaracterization of the  
3 document.  
4 BY MR. BERNICK:  
5 Q. Was that your view, Miss Smith?  
6 A. That's not what I said.  
7 Q. Well, how is what I asked you different  
8 from what you said?  
9 A. I'm not talking about litigation resolving  
10 claims in that paragraph you read to me, I'm talking  
11 about being court date driven. The two may be the  
12 same and they may be very different.  
13 Q. Well, let me just ask you. Is -- when you  
14 say court date driven, that means that basically the  
15 Trust is not settling claims, it is litigating them  
16 and facing court dates, correct?  
17 A. That may be what that means. If you're  
18 having to prepare them, whether you try them or not,  
19 whether they are litigated or not, there is an  
20 enormous cost --  
21 Q. It says become a --  
22 A. -- I know that.  
23 Q. It says becomes a litigation preparation  
24 vehicle. What you were saying was that if, and to  
25 the extent that the trust didn't settle, but had to

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1 prepare cases for litigation and face court dates,  
 2 that process would destroy the Trust, correct?  
 3 A. The mission of the trust. Yes.  
 4 Q. Well, is the mission of the trust anything  
 5 different than the operations of the trust?  
 6 A. I think they are very different.  
 7 Q. Okay. Well just tell me, in 1988 when you  
 8 took a look as the prospect of having to resolve  
 9 these tens of thousands of claims, did you believe it  
 10 was possible to use litigation as a vehicle for  
 11 resolving those claims and not destroy the Trust?  
 12 A. Could you define destroy?  
 13 Q. Yes. Render the Trust incapable of  
 14 performing its mission.  
 15 A. Why is it incapable?  
 16 Q. I'm just asking.  
 17 A. I'm asking you, what do you mean by that.  
 18 Q. Well, did you understand in 1988 that the  
 19 Trust had a mission?  
 20 A. Yes.  
 21 Q. Did you understand in 1988 that the  
 22 mission of the trust was to provide 100 percent  
 23 compensation for all claimants who were exposed to  
 24 Manville asbestos and were injured as a result of  
 25 that?

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1 A. Yes.  
 2 Q. Did you understand that that mission  
 3 required that the claims be resolved?  
 4 A. Yes.  
 5 Q. And all I'm asking you is didn't you  
 6 believe in 1988 that if you had to litigate those  
 7 cases, as opposed to settling those cases, that the  
 8 effect of that would be to make it impossible for the  
 9 Trust to complete its mission successfully?  
 10 A. If we became litigation driven and  
 11 litigation was the way in which all claims were  
 12 resolved, it would be impossible for the trust to  
 13 function. I believe that.  
 14 Q. Well, how many claims in 1988 did you  
 15 believe that the trust could resolve through  
 16 litigation and still survive?  
 17 A. I don't know.  
 18 Q. Did you ever perform that analysis?  
 19 A. I have no recollection of it.  
 20 Q. Well, in point of fact the reason that you  
 21 never performed that analysis in 1988 is that the  
 22 trust expected to resolve all cases through  
 23 settlement or virtually all cases through settlement  
 24 because that's the only way it could possibly work?  
 25 A. That was the hope.

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1 Q. And that was the expectation, was it not?  
 2 A. I can't answer that it was the  
 3 expectation.  
 4 Q. Didn't the plan of reorganization itself  
 5 spell out priorities as to what the Trust should  
 6 settle versus litigate?  
 7 A. Yes.  
 8 Q. And didn't the plan itself spell out that  
 9 the number one priority was to settle?  
 10 A. Yes.  
 11 Q. And wasn't one of the reasons why the plan  
 12 spelled that out was that it was no way it was  
 13 humanly achievable to litigate any significant number  
 14 of cases, given the huge volume of claims that had to  
 15 be resolved. You knew that, correct?  
 16 A. We could not afford the litigation costs  
 17 themselves, that's right.  
 18 Q. Okay. Let's talk a little bit about the  
 19 settlement process that began in 1988. You first  
 20 started with the claims that had been filed against  
 21 the Manville Corporation prior to the bankruptcy,  
 22 correct?  
 23 A. Yes.  
 24 Q. Do you recall that those were known as the  
 25 pre-c claims?

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1 A. Yes.  
 2 Q. And what did pre-c stand for?  
 3 A. Preconsummation claims.  
 4 Q. Okay. And is the reason that that name  
 5 was used is that a decision had been made by the  
 6 Trust to take all of the claims that had been filed  
 7 against Manville prior to the Manville bankruptcy, to  
 8 take all those claims and resolve them prior to the  
 9 consummation of the Trust?  
 10 A. At least to make an effort to do that.  
 11 Q. Okay. And consummation of the trust  
 12 ultimately took place in November of 1988, correct?  
 13 A. Yes.  
 14 MR. STENGEL: Counsel, you said  
 15 consummation of the Trust. I would think you would  
 16 mean consummation of the plan.  
 17 BY MR. BERNICK:  
 18 Q. Consummation of the plan.  
 19 A. Yes, right.  
 20 Q. Do we have an agreement when we talk about  
 21 consummation, we are talking about the point in time  
 22 when the plan becomes effective --  
 23 A. Yes.  
 24 Q. -- and the Trust then formally opens its  
 25 doors for business, correct?

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1 A. That's right.  
2 Q. And prior to the time that the plan was  
3 consummated and the Trust opened its doors, the Trust  
4 could talk with people about resolving their claims,  
5 even agree to resolve their claims, but couldn't pay  
6 those claims, correct?  
7 A. That's right.  
8 Q. And a decision had been made by the Trust  
9 to kind of take us back to where we were before, that  
10 with regard to the roughly 15 to 17,000 lawsuits that  
11 have been filed against Manville, prior to the  
12 bankruptcy, that the trust would try to resettle  
13 those claims subject to consummation but settle them  
14 prior to the consummation of the Trust?  
15 A. Yes. That's right.  
16 Q. Now, that decision to do that, when was  
17 that decision made?  
18 A. That decision I think was made early on.  
19 See, I started in October of '87. I had claims staff  
20 in place by early '88, so I think we started on those  
21 claims probably in about April or May of '88, so the  
22 decision was made prior to that.  
23 Q. Okay. Were you present as -- strike that.  
24 Were you employed at the executive director of the  
25 Trust at the time the Trust decided to resolve those

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1 proposed by the plaintiff's lawyers themselves?  
2 A. I think the first time I had someone  
3 discuss that with me was Dick von Wald, who was the  
4 general counsel of Manville.  
5 Q. Well, my question is whose idea was it?  
6 MR. STENGEL: Lack of foundation.  
7 BY MR. BERNICK:  
8 Q. Do you know?  
9 A. I don't know.  
10 MR. STENGEL: If at any point you want a  
11 break, just let us know.  
12 MR. BERNICK: What's our next exhibit  
13 number? Do we have stickers?  
14 (Exhibit No. 36 was  
15 marked for identification.)  
16 BY MR. BERNICK:  
17 Q. I want to show you Exhibit 36, Ms. Smith,  
18 which is an April 2, 1990 memo from certain of the  
19 claimant's lawyers to the trustees and the executive  
20 director of the Manville Trust. The reason I did two  
21 of those is that it turns out this has got my tab on  
22 it. So, I guess I'll probably have to take that off.  
23 Could you just look on with us, Ms. Smith?  
24 A. Um-hmm.  
25 Q. I'm going to direct your attention,

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1 pre-c claims before consummation?  
2 A. I don't know the answer to that.  
3 Q. You don't remember the decision making  
4 process about that? Let me ask you a more specific  
5 question. I'll withdraw that.  
6 Do you recall that basically the plan of  
7 reorganization said that the Trust was going to have  
8 to resolve claims on a FIFO basis, that is first in,  
9 first out?  
10 A. Yes.  
11 Q. And what that really meant is that the  
12 early filed claims --  
13 A. Um-hmm.  
14 Q. -- get resolved first and the later filed  
15 claims get resolved later, is that correct?  
16 A. Um-hmm. That's right.  
17 Q. Is it also true that nothing in the plan  
18 of reorganization required that the Trust resolve the  
19 pre-1982 claims before the plan was consummated,  
20 correct?  
21 A. The plan did not require that as far as I  
22 can recollect.  
23 Q. Do you recall that the idea, that is to  
24 take all those pre-c claims and resolve them,  
25 pre-consummation, that that idea actually was

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1 Ms. Smith, to the second page.  
2 A. Okay.  
3 Q. You see under, I guess it's the third  
4 paragraph that begins, "You adopted."  
5 A. You adopted a recommendation.  
6 Q. Yes. Let's begin by asking you, this memo  
7 came from Henderson, Motley, Steinberg acting as  
8 selected counsel for the beneficiaries under the  
9 Manville plan of reorganization, right?  
10 A. Yes.  
11 Q. And the SCB was basically a group of  
12 claimants lawyers with whom the Trust dealt on  
13 resolving claims and how to resolve claims?  
14 A. Yes.  
15 Q. Okay. And this memo is from that group,  
16 that is, the SCB to the trustees and the executive  
17 director, that's you? Correct?  
18 A. Yes.  
19 Q. I'll represent you that this was produced  
20 as the Bates number indicates, it was produced from  
21 the Trust's files. In the ordinary course of your  
22 duties, did you receive from time to time  
23 communications from the SCB?  
24 A. Yes.  
25 Q. And is this a communication from the SCB

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1 received by the Trust on or about the date it  
2 appears?  
3 A. It appears so.  
4 Q. Okay. And do you see that on the second  
5 page, the lawyers for the claimants say "you adopted  
6 our recommendation that the Trust make efforts to  
7 settle prepetition cases prior to consummation in  
8 order to clear the trial docket and develop goodwill  
9 with the constituency." Do you see that?  
10 A. Yes, sir, I do.  
11 Q. And basically what they are saying is that  
12 it was the claimants and their lawyers who  
13 recommended the idea of settling the prepetition  
14 claims prior to consummation and that they made that  
15 recommendation both to get clear of the trial docket  
16 and also to develop some goodwill.  
17 MR. STENGEL: Counsel, are you asking if  
18 that refreshes her recollection or if she can read  
19 the document along with you?  
20 MR. BERNICK: Well, I don't think that's  
21 an objection, Jim, but in any event, my question  
22 stands.  
23 THE WITNESS: I guess I meant, I have to  
24 ask what are you asking me? Does those words say  
25 that? The answer is yes. That's what they say.

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1 BY MR. BERNICK:  
2 Q. Okay. Is that consistent with your own  
3 understanding at the time that you were the executive  
4 director?  
5 A. You are asking me if at the time I was  
6 executive director, did I think this idea of going  
7 ahead and doing the pre-c cases came from just the  
8 plaintiff's bar?  
9 Q. Came from the, was recommended by the  
10 plaintiff's bar?  
11 A. I think it was recommended by many, one of  
12 whom was the plaintiff's bar.  
13 Q. Okay. Do you have any documentation that  
14 the recommendation came from anybody else?  
15 A. As I said, the first time I have any  
16 recollection of talking about that subject was from  
17 Dick von Wald, who was general counsel of Manville.  
18 Q. My question is do you have any  
19 documentation of anybody else making the  
20 recommendation besides the SCB?  
21 A. Not that I know about.  
22 Q. Is the statement again here about the  
23 motives for the recommendation consistent again with  
24 your own understanding, that is, to clear the trial  
25 docket and to develop goodwill with the constituency?

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1 A. No.  
2 Q. No?  
3 A. I know of no other. No.  
4 Q. Okay. When it says develop goodwill with  
5 the constituency, what the SCB lawyers were saying  
6 there was that they recommended that the prepetition  
7 cases be settled prior to consummation in part to  
8 create goodwill with the claimants themselves,  
9 correct?  
10 A. I think so.  
11 Q. Certainly from the point of view of  
12 preserving the assets of the Trust, the effect of  
13 settling the pre-c cases pre-consummation would have  
14 the effect of enabling a faster, rather than a slower  
15 payout of the Trust's funds, correct?  
16 A. Yes.  
17 Q. So basically a decision was made that even  
18 though the plan didn't require the prepetition claims  
19 to be settled pre-consummation, and even though  
20 settling them in that fashion would increase the flow  
21 of money out of the Trust, it was still an idea that  
22 the Trust adopted because it would help clear the  
23 trial docket and develop goodwill, fair statement?  
24 A. Yes.  
25 Q. Now, it's also true, is it not, that the

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1 Trust not only adopted this policy of settling the  
2 pre-c cases, pre-consummation, but it had to follow  
3 certain requirements of the settlement that were set  
4 out by the plaintiff reorganization, right?  
5 A. That's right.  
6 Q. And let's just go through what some of  
7 those requirements are. I'm not going to pursue it  
8 in a lot of detail, but just tell me what you  
9 remember and what you don't remember.  
10 A. Okay.  
11 Q. Is it true that the plan of reorganization  
12 spelled out settlement requirements or claims  
13 resolution requirements that applied to claims,  
14 whether they were resolved individually or in groups,  
15 any kind of settlement had to follow certain  
16 requirements, correct?  
17 A. Yes.  
18 Q. And the Trust was obliged to follow what  
19 the plan said should be done when it came to settling  
20 claims, as the Trust had to follow the plan, correct?  
21 A. Yes. Absolutely.  
22 Q. Is it true that under the plan of  
23 reorganization, the Trust was obliged to settle  
24 Manville liability only, that is, only the liability  
25 that used to be the liability of Manville Corporation



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1 for injuries caused by exposure to its asbestos?  
2 A. Yes.  
3 Q. Is it also true that under the plan, the  
4 settlements that the Trust authorized and paid out  
5 had to be fair and equitable?  
6 A. Yes.  
7 Q. Is it also true that the plan required a  
8 medical and economic evaluation of the claims?  
9 A. It had to have a medical on each one of  
10 them. An economic evaluation, I'm a little confused  
11 by what you mean.  
12 Q. Do you recall that there is a claims  
13 resolution procedure set out in the plan of  
14 reorganization?  
15 A. Yes, sir.  
16 Q. And do you recall that the claims  
17 resolution procedure set out the requirements for how  
18 claims had to be resolved?  
19 A. Yes, sir.  
20 Q. I want to show you Exhibit 2 that's  
21 already been used in prior depositions, and ask you  
22 whether this is a copy of the claims resolution  
23 procedures. I'm sorry.  
24 A. Yes. It appears to be.  
25 MR. STENGEL: One probably trivial

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1 paragraph B-6, to consider a variety of different  
2 factors concerning claim value.  
3 A. Yes.  
4 Q. And these factors include both medical  
5 factors and economic factors, correct? The number  
6 and age of dependents is an example.  
7 A. Oh, I'm sorry. I didn't understand your  
8 question, using those terms, that is.  
9 Q. Yes. I'm just asking whether the  
10 evaluation of claims had to include both medical and  
11 economic factors?  
12 A. Yes.  
13 Q. And is it also true that the Trust was  
14 required to evaluate those factors really for each  
15 and every claim?  
16 A. That's right.  
17 Q. In other words, the Trust documents, the  
18 plan documents required that each claim be evaluated  
19 on an individual or case-by-case basis, would that be  
20 correct?  
21 A. Yes, sir.  
22 Q. And that in doing that evaluation, the  
23 Trust had to follow the different factors that were  
24 listed in the CRP and in particular in paragraph B.6,  
25 correct?

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1 clarification. You made reference to the CRPs being  
2 part of the plan. The document indicates they were  
3 an annex to the Trust agreement, which is a  
4 plan-related document, but is not the plan itself.  
5 BY MR. BERNICK:  
6 Q. Okay. Is there any material difference  
7 in your mind, Ms. Smith?  
8 A. As to how -- that this governed how the  
9 claims would be resolved? Yes, it did.  
10 Q. Okay. And do you see that that is a copy  
11 of the CRP, that is, Exhibit 2?  
12 A. Um-hmm, um-hmm, yes.  
13 Q. And does it in fact spell out the various  
14 requirements that have to be met?  
15 A. Yes.  
16 Q. Okay. Where is the -- page 5 does not  
17 have the consultant's language.  
18 A. I haven't thought about this in a long  
19 time.  
20 Q. Do you recall that under the CRP, the  
21 Trust was given the latitude to retain consultants to  
22 advise it concerning the valuation of claims?  
23 A. I don't remember that.  
24 Q. Okay. Is it true that the Trust was  
25 required, if you turn to page 3, and item or

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1 A. Yes.  
2 Q. Okay. Is it true, as you understood it,  
3 and I'll tell you Mr. Austern testified that under  
4 the plan contemplation, you just didn't take a claim  
5 at face value. It had to be evaluated. Would that  
6 be fair?  
7 A. That's right.  
8 Q. Okay. Now, when it came to -- strike  
9 that. All the things that we have talked about, that  
10 is, that medical and economic factors had to be  
11 considered, that you just don't take claims at face  
12 value, that you do an individual case-by-case  
13 evaluation. Those were all requirements that the  
14 plan or plan documents imposed on the Trust for the  
15 resolution of any claim; true?  
16 A. Yes.  
17 Q. Okay. Now, when it came to resolving the  
18 pre-c claims, isn't it true that the Trust  
19 specifically approved a set of procedures that were  
20 unique, that is, that were tailored to dealing with  
21 the pre-c claims?  
22 A. For the -- a particular set, I think was  
23 developed. I'd have to look at them to see what they  
24 are because I don't recollect them at all.  
25 Q. Do you recall that a meeting was held at

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1 the board of trustees for the Trust in the spring of  
2 1988 to take up the questions of how the pre-c claims  
3 were going to be settled?  
4 A. No. I don't recall.  
5 Q. Let me see if I can refresh your  
6 recollection a little bit. Do you recall that  
7 discussions with the plaintiff's lawyers on the pre-c  
8 claims began in about the spring of 1988?  
9 A. Yes, it did.  
10 Q. And do you recall that prior to their  
11 being any settlement negotiations, the question of  
12 how those negotiations would take place was addressed  
13 by the board of trustees in a presentation in order  
14 to get their approval?  
15 A. I have no recollection at this time.  
16 Q. I'm going to give you guys this. You may  
17 want to look at Tab 4 or Exhibit 4, which has already  
18 been used in this case. Do you see that that is a  
19 set of minutes for a Manville Trust board meeting on  
20 April 18 of 1988?  
21 A. Yes, I do.  
22 Q. And typically, were minutes kept of all  
23 the board of trustees meetings?  
24 A. Yes.  
25 Q. And who was responsible for keeping the

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1 minutes? Was that Mr. Austern?  
2 A. Not at this time, I don't believe. Maybe  
3 so.  
4 Q. Okay.  
5 A. Perhaps. I don't remember.  
6 Q. I think if you take a look at the last  
7 page, on page 9, you will see that Mr. Austern signed  
8 these minutes.  
9 A. That's his name. Yes.  
10 Q. And do you see if you flip through it that  
11 this was the, a board meeting where discussions took  
12 place of the procedures that would be followed in  
13 settling the pre-c claims. And if you want to take a  
14 look at the summary, executive summary that  
15 immediately follows the minutes themselves.  
16 Do you recall that in point of fact a  
17 summary was presented to the board of directors for  
18 their approval about what policies were going to be  
19 used in settling the pre-c claims?  
20 A. I have no recollection of that.  
21 Q. Does this refresh your recollection at  
22 all?  
23 A. I'm going to read it. Okay.  
24 Q. Yes. Does this refresh your recollection  
25 that the board meeting at which the resolution of the

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1 pre-c claims was discussed took place on or about  
2 April 18 of 1988 as reflected in these minutes,  
3 Exhibit 4?  
4 A. Well, these documents reflect that. I  
5 have no recollection of it personally.  
6 Q. Do you have any recollection at all of the  
7 board's approval of procedures for resolving the  
8 pre-c claims?  
9 A. I have no personal recollection.  
10 Q. Okay. And this doesn't refresh your  
11 recollection at all?  
12 A. No, sir.  
13 Q. Okay. If we take a look at Exhibit A, and  
14 if you want to take a look down at the bottom  
15 right-hand corner for page CRMC 131122.  
16 MR. STENGEL: The attached exhibit to the  
17 amendments?  
18 BY MR. BERNICK:  
19 Q. Yes, it's exhibit A to the document.  
20 A. 131122?  
21 Q. Right. Are you with me?  
22 A. Um-hmm.  
23 Q. And you see that's the second page of the  
24 document, it's called policies for settling the pre-c  
25 bankruptcy claims?

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1 A. Yes.  
2 Q. Okay. And do you see that it says at the  
3 beginning of the second paragraph on page 1 under  
4 introduction "the information on the pre-bankruptcy  
5 claims will be limited and because of the desire to  
6 settle these claims quickly wherever possible, they  
7 will be evaluated by an application of the Manville  
8 share. Do you see that?  
9 A. Yes.  
10 Q. Is that consistent with your own  
11 understanding of the approach that was to be taken  
12 and was in fact taken in resolving the pre-c claims?  
13 A. Yes, I think it is.  
14 Q. Okay. Now, it says that the information  
15 will be limited. Why was the information going to be  
16 limited? Why was the decision made to take limited  
17 information on pre-c claims in the course of  
18 resolving it?  
19 A. Because those were cases in which we  
20 already had complaints filed and litigation files on  
21 those 17,000 claims and so we were asking the  
22 plaintiff's lawyers to update, I think it was one or  
23 two pages, with a very brief, short forms and so the  
24 information would be, on those forms, was going to be  
25 more limited than it would be if we had to complete,

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1 I can't recall now, the ultimate form that we created  
2 for them to file.

3 Q. Okay. Was the decision to take limited  
4 information, that is, gather limited information on  
5 the pre-c claims, was that a decision that was made  
6 by the Trust?

7 A. Yes.

8 Q. Okay. Did anyone, to your knowledge,  
9 compel or direct or force the Trust to take that  
10 approach?

11 A. No.

12 Q. And is it true, I mean, was there any, was  
13 there any reason why the Trust couldn't, if it wanted  
14 to, gather more extensive information on the pre-c  
15 claims before they were resolved?

16 A. No one was preventing that.

17 Q. Okay. Now, I think what you have said is  
18 that the information on the pre-c claims was going to  
19 be limited because the Trust already had files on  
20 those claims. Is that what you are saying?

21 A. We had the litigation, Manville's  
22 litigation files. These were all lawsuits.

23 Q. I understand that. Did the Trust have  
24 those litigation files at the time that the pre-c  
25 claims were negotiated?

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1 question?

2 A. Apparently not. It's a very complicated  
3 question. I know you have tried twice, but I still  
4 don't understand.

5 Q. I'll try it again and when counsel makes  
6 an objection, he is entitled to do that. Unless you  
7 misunderstand or don't understand the question, you  
8 should answer. If you don't, just let me know, as  
9 you have just done. I'll put it to you again.

10 From your point of view, there is no  
11 reason why the Trust couldn't or shouldn't do the  
12 case-by-case evaluation of the pre-c claims before it  
13 went ahead and settled them?

14 A. No.

15 Q. I'm sorry.

16 A. You are right. No.

17 Q. Now, those litigation files that you say  
18 existed in the pre-c claims, do you know that in fact  
19 the Trust ever reviewed them before they settled the  
20 claims?

21 A. I know there was review of those files,  
22 yes.

23 Q. Okay. But certainly if the Trust wanted  
24 to do a case-by-case evaluation of the pre-c claims  
25 prior to settlement, they could have gone to those

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1 A. Yes. I believe so. I thought so. I  
2 mean, that's my recollection.

3 Q. Okay. So from your recollection, the  
4 Trust was in a position to do the individual  
5 case-by-case evaluation of the pre-c claims that was  
6 called for in the CRP that we just took a look at, is  
7 that fair?

8 A. I think that's fair. Yes.

9 Q. And there is no reason that you can think  
10 of why the Trust wouldn't do an individual  
11 case-by-case evaluation of the pre-c claims before  
12 they were settled consistent with the requirements of  
13 the CRP?

14 A. They looked at every one of those claims.

15 Q. Well, I understand. But my question is  
16 you can't think of any reason why the Trust couldn't  
17 or shouldn't do a case-by-case evaluation of the  
18 pre-c claims that was required by the CRP prior to  
19 the time those cases were settled?

20 A. No.

21 MR. STENGEL: Object to the form of the  
22 question.

23 BY MR. BERNICK:

24 Q. I'm sorry. You can answer if you  
25 understand the question. Do you understand the

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1 files and done an analysis and looked at them  
2 individually in accordance with the CRP, correct?

3 A. They could have.

4 Q. Okay. And certainly if they are doing  
5 their job, they should have, right?

6 MR. STENGEL: Object to the form of the  
7 question. You may answer.

8 THE WITNESS: I'm not prepared to say they  
9 should V I'm prepared to say they could have.

10 BY MR. BERNICK:

11 Q. Well, they should have done the individual  
12 evaluation, correct?

13 A. But they did do the individual evaluation  
14 because they had applications for coming in that were  
15 current.

16 Q. Okay. Well, they should have done the  
17 individual evaluation. That's what the plan  
18 documents required, correct?

19 A. Um-hmm, um-hmm.

20 Q. You have to respond orally.

21 A. Yes.

22 Q. Okay. And in order to do an individual  
23 evaluation, they had information at their disposal in  
24 the form of litigation files, correct?

25 A. They did have those, yes.

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1 Q. Okay. And certainly if they were doing  
2 their job as fiduciaries for all beneficiaries, those  
3 individual litigation files contained valuable  
4 information about the individual claims, correct?  
5 MR. STENGEL: Objection to the form of the  
6 question.  
7 THE WITNESS: It did contain that. Yes.  
8 BY MR. BERNICK:  
9 Q. And because it contained that information,  
10 that's information that the Trust should have  
11 reviewed before settling any of those claims,  
12 correct?  
13 A. I'm not prepared to say they should have  
14 reviewed all of those to enable them to settle a  
15 claim.  
16 Q. What excuse can you think of as to why  
17 those files shouldn't have been reviewed prior to  
18 settlement?  
19 A. If they had adequate information from some  
20 other source.  
21 Q. Well, but are you aware of any --  
22 A. It's not the only one.  
23 Q. Okay. Are you aware of any other source  
24 of information that the Trust had on these pre-c  
25 claims other than the litigation files?

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1 A. They had the forms that the plaintiff's  
2 lawyers were submitting at the time.  
3 Q. Oh, but those come from the plaintiff's  
4 lawyers, right?  
5 A. That's right.  
6 Q. Okay, well, but the Trust certainly had an  
7 obligation to look beyond what the plaintiff's  
8 lawyers were saying being their own claims, right?  
9 A. They had medical things that were  
10 supporting documents attached to those, those other  
11 kinds of things.  
12 Q. Do you know that prior to the time of  
13 settlement, that the claimants had to submit medical  
14 forms on pre-c claims? Is that your testimony?  
15 A. Wait a minute. Say that again.  
16 Q. Is it your testimony that prior to the  
17 time that the Trust settled the pre-c claims, they  
18 got medical files for each of the pre-c claims. Is  
19 that your testimony?  
20 A. I don't remember.  
21 Q. But certainly --  
22 A. I didn't settle claims. I don't remember.  
23 Q. But you were responsible as the executive  
24 director for the procedures that were followed in  
25 settling claims, correct?

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1 A. That's right.  
2 Q. And certainly one of the procedures that  
3 was followed that was supposed to have been followed  
4 by the Trust prior to settling pre-c claims was to  
5 consider any information that the Trust had beyond  
6 what the claim form itself said, correct?  
7 A. I don't know that that's what that says.  
8 Q. Oh, but you told me a few minutes ago that  
9 the Trust had an obligation to look beyond the face  
10 of the claim, correct?  
11 A. I didn't use those words.  
12 Q. I think that that's exactly what you said.  
13 Plan contemplated you just don't accept claims at  
14 face value. That was your testimony, right?  
15 A. Yes.  
16 Q. And if you don't accept a claim at face  
17 value, that means you have to consult information  
18 that's available, readily or reasonably available to  
19 you from other sources, correct?  
20 A. That would be correct.  
21 Q. And certainly information reasonably  
22 available to the Trust in the pre-c claims would have  
23 involved the litigation files, true?  
24 A. True.  
25 Q. And from that point of view, the Trust

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1 should have looked at the litigation files for it to  
2 do the individual claim by claim evaluations that the  
3 plan required, correct?  
4 A. Or any other information they had.  
5 Q. Okay. With that caveat, is the answer to  
6 my question that's correct?  
7 A. Yes.  
8 Q. Okay. Now, if you take a look a little  
9 bit later on, on Exhibit 4, do you see that --  
10 MR. STENGEL: This is all Exhibit 4.  
11 BY MR. BERNICK:  
12 Q. Yes. All Exhibit 4. Do you see, if you  
13 look, Ms. Smith, at 131143. 131143 is a bit later  
14 on.  
15 A. Okay.  
16 Q. See, it's called Exhibit E, trust policy  
17 and claim valuation methodology? Do you see that?  
18 A. Um-hmm. Yes, sir.  
19 Q. Okay. And it talks about various methods,  
20 you see it says alternative methods and one method is  
21 statistical and then expert system and then logical  
22 medical and the next one on the next page is  
23 litigation risk? Do you see that?  
24 A. Yes, sir.  
25 Q. And do you see where it then goes down to

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1 talk about prebankruptcy claim evaluation in  
2 particular?

3 A. Yes, sir.

4 Q. And it says "in order to settle the  
5 approximately 17,000 prebankruptcy claims prior to  
6 consummation of the plan, detailed review of  
7 individual claim files has been declared infeasible,  
8 therefore, the Trust has decided to evaluate these  
9 claims using a statistical approach. Do you see  
10 that?

11 A. Yes, sir, I do.

12 Q. Okay. Now, what this says, Ms. Smith, is  
13 this consistent again with your own recollection of  
14 what the Trust decided to do?

15 A. I have no recollection of this paragraph.  
16 I'm just reading it with you.

17 Q. Okay. But isn't it true that what is said  
18 here is that the Trust is not going to do a detailed  
19 review of individual claims? That's what it says,  
20 right?

21 A. I'm reading it, sir. It certainly says  
22 that this is one of the -- what it says is that they  
23 will evaluate claims using information about how much  
24 has been paid from other defendants. Add it from the  
25 ACF.

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1 described here, what that really means, is it not,  
2 Ms. Smith, to put it very simply, the Trust didn't  
3 look at medical, individual medical files for the  
4 pre-c claims prior to their negotiation, correct?

5 A. I'm going to back to read how it document  
6 defines statistical approach.

7 Q. Okay. Go ahead. I'm going to ask but  
8 that so it's good that you do.

9 A. Since they talk about this reflecting the  
10 relative importance of each factor in the total value  
11 of the claim, I have to assume they are looking at  
12 factors. I have no recollection of this document, so  
13 I don't remember what those words came, where they  
14 came from.

15 Q. Well, my question to you is there is no  
16 reason or limitation that you can think of on the  
17 Trust such that it couldn't decide if it wanted to,  
18 back in 1988, to do an individual detailed review,  
19 correct?

20 A. No. You are right.

21 Q. I'm sorry?

22 A. You are right.

23 Q. So it decided to follow a, the statistical  
24 approach basically for its own reasons, correct?

25 MR. STENGEL: Objection. Lack of

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1 Q. Yeah, and all that there is on an  
2 individual basis is a short synopsis claim form that  
3 gets filled out by the claimant or the lawyer, right?

4 A. So it appears from reading this.

5 Q. And certainly what this is describing is  
6 not the individual case-by-case evaluation with the  
7 several factors that were listed in the CRP paragraph  
8 B.6, is it?

9 MR. STENGEL: Objection to form.

10 THE WITNESS: You appear to be right.

11 BY MR. BERNICK:

12 Q. Now, is there anybody that compelled the  
13 Trust or directed the Trust to follow this approach?

14 A. I have no recollection of anyone.

15 Q. Is the statistical approach, do you  
16 remember anyone saying to the trustee, got to do the  
17 statistical approach?

18 A. I have no recollection of anyone saying  
19 that.

20 Q. Is there any reason why the Trust wasn't  
21 free to decide with regard to the pre-c claims to do  
22 the individual detailed review that the plan  
23 documents required?

24 A. I have no recollection of that.

25 Q. Now, in the statistical approach that's

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1 foundation.

2 BY MR. BERNICK:

3 Q. As you understood it. Hold on a second.  
4 You were there at the time this was done, correct?

5 A. Yes, sir, I was.

6 Q. And as you understood it the Trust made  
7 its own decision for its own reasons. Nobody was  
8 forcing it to take the statistical approach,  
9 correct?

10 A. That's right.

11 Q. And if it wanted to, the Trust could have  
12 gotten individual claim submissions, including  
13 medical records and they could have looked at the  
14 individual litigation files, correct?

15 A. Yes.

16 Q. And decided not to look at individual  
17 litigation files, correct?

18 A. I think files were looked at but they were  
19 not -- all determinations were not made from that  
20 source of information. You are right.

21 Q. Do you know of any procedure which the  
22 Trust adopted which required that the claims officers  
23 review the litigation files before settlement?

24 A. I do not personally. No.

25 Q. Do you know of any procedures that the

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1 Trust adopted that required that the claims officers  
2 do the individual case-by-case evaluation set forth  
3 in the CRP?  
4 A. I have no knowledge at this time.  
5 Q. Now, you say it says detailed review of  
6 individual claims files has been declared infeasible.  
7 That's what it says at 131144, correct?  
8 A. Yes, it does.  
9 Q. Do you know why it was infeasible to do a  
10 detailed review?  
11 A. No. I do not.  
12 Q. Isn't the reason why it was said it was  
13 infeasible to do the individual review was that if  
14 the Trust wanted to settle all the pre-c claims by  
15 November of 1988, there just was not enough time to  
16 do the detailed review, isn't that what the story was  
17 in April of '88 when this issue was taken up?  
18 MR. STENGEL: Objection to the form of the  
19 question.  
20 THE WITNESS: It seems a likely answer.  
21 BY MR. BERNICK:  
22 Q. Well, in point of fact, isn't it true that  
23 when you gave your own interviews, you yourself  
24 underscored the fact that you turned up the heat on  
25 the Trust to resolve the pre-c claims?

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1 A. Yes, I did.  
2 Q. There was a desire on the part of the  
3 Trust in 1988 to resolve the pre-c claims and to  
4 resolve them quickly so that it was done before  
5 pre-consummation, correct, before consummation?  
6 A. Yes.  
7 Q. And as a result of that decision, nobody  
8 made the Trust do that, right?  
9 A. There was no court order to do that. Is  
10 that what you are asking?  
11 Q. There was no court order, right?  
12 A. That's right.  
13 Q. There was no plan requirement, right?  
14 A. That's right.  
15 Q. Okay. But it's something that certainly  
16 the plaintiffs' lawyers wanted, right?  
17 A. Among others, yes.  
18 Q. All right. And because the Trust had  
19 decided to resolve the pre-c claims quickly prior to  
20 consummation, isn't it true that as a result the  
21 Trust adopted claims resolution procedures that were  
22 different from what was in the plan of  
23 reorganization?  
24 MR. STENGEL: Objection to the form of the  
25 question.

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1 BY MR. BERNICK:  
2 Q. As you understood it?  
3 A. Yes.  
4 MR. STENGEL: Same objection.  
5 THE WITNESS: It appears so.  
6 BY MR. BERNICK:  
7 Q. No other explanation that you can think of  
8 for the language that you've read out of Exhibit 4,  
9 is there?  
10 A. Not at this time.  
11 Q. In point of fact, let's talk a little bit  
12 about the, this market share type of approach. Do  
13 you see that the market share approach is described  
14 as being the statistical approach?  
15 A. What page are you referring to?  
16 Q. This is on pages -- what are we just  
17 looking at, pages 2 and 3 of this little appendix  
18 here. Are you with me?  
19 A. Not too sure.  
20 MR. STENGEL: You are starting with  
21 prebankruptcy claim evaluation.  
22 BY MR. BERNICK:  
23 Q. Right. On 131144 at the top of the next  
24 page. You see where the document goes on to describe  
25 statistical approach and makes reference to market

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1 share?  
2 A. Are you talking about in the last  
3 paragraph?  
4 MR. STENGEL: I think the market share  
5 information is on the following page, 3.  
6 THE WITNESS: We are talking about the  
7 stored shared information? Is that what we are  
8 talking about?  
9 BY MR. BERNICK:  
10 Q. Yes. You see at the top it says, "Using  
11 data provided by Manville in the asbestos claims  
12 facility, the Trust will calculate the historical  
13 Manville share percentage for counsel and geographic  
14 area?  
15 A. Yes.  
16 Q. So basically what was going to happen was  
17 that the Trust was going to go out and negotiate the  
18 pre-c claims in groups with each lawyer who had a  
19 significant group of pre-c claims, right?  
20 A. But that's based on looking at every one  
21 of those claims.  
22 Q. Well, we are going to get to that in a  
23 minute. But the procedure that the Trust approved in  
24 '88 with respect to the pre-c claims was that the  
25 negotiations would take place on a group basis,

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1 groups of claims, grouped by particular attorneys who  
2 represented the claimants, correct?

3 A. I guess the answer to that is yes. In  
4 practice we go and sit down and talk about one claim  
5 if you sent someone to someone's office, so I guess  
6 that's what they're talking about.

7 Q. In point of fact, what happened was that a  
8 series of appointments were made with the plaintiffs'  
9 lawyers who had the big groups of claims, pre-c  
10 claims and trust officers went along to those  
11 appointments and sat down and negotiations group  
12 settlements with each of the significant attorneys,  
13 correct?

14 A. They negotiated settlements but the  
15 implication of group settlements, I have to say no,  
16 they did not do that, if you are implying what I  
17 think you are.

18 Q. Okay. Well, let's just begin with baby  
19 steps and we'll get to so we don't have to worry  
20 about the implications, okay?

21 A. Okay.

22 Q. First baby step is, is it true that what  
23 the Trust officers did in 1988 with respect to the  
24 pre-c claims is that they went and they sat down with  
25 the plaintiffs' lawyers who represented large groups

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1 A. Yes.

2 Q. Okay. So basically the Trust would with  
3 respect to a given plaintiffs' lawyer and  
4 geographical area, use information in order to figure  
5 out a percentage Manville share?

6 A. Yes.

7 Q. Okay. The whole idea it was then to take  
8 that share, figure out how much had already been paid  
9 for the group of claimants by the other companies.

10 A. Yes.

11 Q. And then figure out well, based upon those  
12 settlements, what's the right number for Manville  
13 based upon the Manville share, correct?

14 A. Based on the information from Manville of  
15 how much they, business they had done in that area  
16 with that particular employer, that they provide the  
17 asbestos. Yes. Okay. Those kind of things. Yes.

18 Q. So the emphasis of the statistical  
19 approach was to get information about the scope of  
20 prior settlements by prior companies and figure out  
21 what would be the corresponding settlement for  
22 Manville given a calculation of Manville's share? Is  
23 that the approach?

24 A. Yes.

25 Q. Okay. So this whole approach, the

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1 of claims?

2 A. Yes.

3 Q. Okay. And when they went and sat down and  
4 discussed claims with those plaintiffs' lawyers, they  
5 would seek to resolve all of the pre-c claims that  
6 each plaintiff lawyer had?

7 A. That was their mission.

8 Q. And they would then report back to the  
9 Trust, they would get the authority to do that,  
10 correct?

11 A. Yes.

12 Q. And then they would then report back to  
13 the Trust whether they had been successful in  
14 reaching settlements with each of the prominent  
15 attorneys, correct?

16 A. Yes.

17 Q. Now, isn't it true that according to this  
18 document, they had, they were provided information in  
19 a short synopsis form for the claimants that they  
20 were going to settle?

21 A. The individual claimants. Yes.

22 Q. Okay. And then the second step was that  
23 they were to use data provided by Manville in the ACF  
24 and calculate a "Manville share" percentage for  
25 counsel and geographic area, correct?

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1 statistical approach that was approved by the Trust  
2 in the spring of 1988 depended upon the Trust  
3 figuring out the correct Manville share for each  
4 counsel and geographic area, correct?

5 A. That was part of it. Yes.

6 Q. Okay. Now, ultimately in the  
7 negotiations, the negotiations would focus on what  
8 was the right Manville share, right?

9 A. That was a big issue.

10 Q. Okay. Because if the Trust believed that  
11 the Manville share was one number, and the  
12 plaintiffs' lawyer believed that it was another  
13 number, they had to reach agreement on what the right  
14 Manville share was, right?

15 A. Yes.

16 Q. And depending upon what they agreed as  
17 being the right Manville share, that agreement would  
18 affect the overall value of the group settlement that  
19 was being put together, right?

20 A. Yes.

21 Q. Okay. So that if the share were high,  
22 each claim would be paid out at a higher level. If  
23 the share were low, each and every claim would be  
24 paid out at a lower level, correct?

25 A. That was a factor. It wasn't the whole

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1 determination of what those claims were worth.  
2 Q. Would you agree with me that it was a  
3 factor, that is this Manville share was a factor that  
4 affected the payout on each and every pre-c claim?  
5 A. I think that's probably so. Yes.  
6 Q. If you are adopting this --  
7 A. I'm saying that was part of it and so I  
8 presume that it was but I, whether some settled if  
9 that was not, when you say each and every, that's  
10 difficult to say I know that that's so. I don't know  
11 that that's so.  
12 Q. But at approach that was described here  
13 and approved by the Trust?  
14 A. Yes.  
15 Q. Contemplated that the Manville share would  
16 be used as a way of calculating the overall levels of  
17 settlement for all of the pre-c claims that were  
18 being settled on this basis, correct?  
19 A. It would be one of the factors considered.  
20 Q. And in point of fact what happened was  
21 that the claims officers went around to the different  
22 plaintiffs' lawyers and they sat down and they  
23 basically had bargaining back and forth on what's the  
24 right Manville share, correct?  
25 A. Yes. Negotiated issues. That's right.

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1 Q. So, in order for the Trust to be effective  
2 in that negotiation process, the Trust had to do an  
3 analysis and figure out what was the correct Manville  
4 share, correct?  
5 A. It had to be done. Yes.  
6 Q. Because otherwise, in the negotiation  
7 process, they wouldn't have any ability to push away  
8 from the table and say no, you want too much, your  
9 Manville share is too high, correct?  
10 A. That would be a problem.  
11 Q. Now, are you aware of any document  
12 anywhere that sets out the Trust's analysis of the  
13 Manville share for any pre-c settlement negotiation?  
14 A. I have no personal knowledge of that.  
15 Q. Did anyone ever come to you and say, here  
16 is our Manville share analysis given the data  
17 provided by Manville and the ACF?  
18 A. I have no recollection of that at this  
19 moment.  
20 Q. Has anyone at any point in time that you  
21 can recall ever acquainted with you with the  
22 existence of such an analysis?  
23 A. I have no recollection of that at this  
24 time.  
25 Q. Isn't it true that you got memos during

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1 the course of these settlement negotiations that took  
2 place in 1988?  
3 MR. STENGEL: On this subject?  
4 THE WITNESS: I may have. I tell you, I  
5 don't have any recollection of that at this moment.  
6 BY MR. BERNICK:  
7 Q. Isn't it a fact that what actually  
8 happened was that before the Trust officers went to  
9 meet with a given claimants' lawyer on pre-c claims,  
10 that the claims people at the Trust would fill out a  
11 memo that would give a whole range of possible  
12 Manville shares and the corresponding average claim  
13 value for each possible share level, isn't that what  
14 happened?  
15 A. I'm sorry. I do not remember that. I  
16 didn't settle claims.  
17 Q. But were you responsible for the  
18 procedures that were followed in settling claims,  
19 correct?  
20 A. Yes. But I do not recollect that.  
21 Q. But well certainly if you wanted to adopt  
22 a procedure consistent with what had been approved by  
23 the Trustees in April of '88, you would have added a  
24 procedure that required, prior to any settlement  
25 discussion for pre-c claims, the completion of an

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1 analysis of the Manville share in accordance with the  
2 statistical approach, correct?  
3 MR. STENGEL: Objection to the form of the  
4 question.  
5 BY MR. BERNICK:  
6 Q. Is it would have been a sound procedure,  
7 right?  
8 MR. STENGEL: Same objection.  
9 THE WITNESS: It may have been a sound  
10 procedure. I have no recollection of how it was done  
11 at the time. That was 11 years ago.  
12 BY MR. BERNICK:  
13 Q. That was your responsibility, wasn't it?  
14 A. My responsibility was to run the place.  
15 Ultimately, it was all my responsibility. That's  
16 right.  
17 Q. Okay. I want to show you, and maybe we'll  
18 take a quick break because we have been going on for  
19 a while. I want to show you, is this 84?  
20 MR. STENGEL: This is Exhibit 37?  
21 MR. BERNICK: I guess it is Exhibit 37.  
22 Let me mark it as such.  
23 (Exhibit No. 37 was  
24 marked for identification.)  
25 BY MR. BERNICK:



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1 Q. I'm sorry to shove that at you, Ms. Smith.  
2 A. No problem. No problem.  
3 Q. For the record, this is, Exhibit 37 is a  
4 memo dated June 17, 1988 from Gregg Smith and  
5 Marianna Smith and Paul Loehr, it bears the numbers  
6 TRUST 0017545 through 547. This is the form in which  
7 it was produced to us. And I think you will see,  
8 Ms. Smith, is this a memo that Mr. Smith wrote to you  
9 when were you executive director in June of 1988?  
10 A. To me and to Paul Loehr. Yes.  
11 Q. Okay. And does this describe the upcoming  
12 appointment with Mr. Kazan to discuss the settlement  
13 of 287 prepetition claims?  
14 A. Yes.  
15 Q. And is this memo typical of the kind of  
16 memo that would be sent to you as the executive  
17 director, Mr. Loehr as the chief claims officer  
18 before people like Mr. Smith went to meet claimants'  
19 lawyers like Mr. Kazan?  
20 A. I presume so. It's obviously from him to  
21 me.  
22 Q. But does it follow the form and substance  
23 of memos that you typically would get before these  
24 meetings with the lawyers who represented pre-c  
25 claimants?

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1 MR. STENGEL: Objection to the form of the  
2 question.  
3 THE WITNESS: My answer is the same as  
4 before. I don't remember these memos.  
5 BY MR. BERNICK:  
6 Q. Okay. Now, do you see that in point of  
7 fact, if you take a look at the first page, it talks  
8 about the fact there is an upcoming appointment with  
9 Mr. Kazan?  
10 A. Yes.  
11 Q. And at the bottom of the page, it  
12 describes the settlement values that have been  
13 received by Mr. Kazan on 217 of the claims?  
14 A. Yes.  
15 Q. And it then says if you apply a Manville  
16 share concept to the figure that is the prior  
17 settlement figure, you get the following, and then  
18 there is a list, a long list of, a whole series of  
19 different possible Manville shares?  
20 A. Yes.  
21 Q. And for each possible Manville share, the  
22 aggregate that would, the aggregate dollar value that  
23 would correspond to that share and the per-claim  
24 value that would correspond to that share?  
25 A. Yes. I see that.

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1 Q. So basically the memo lists a whole series  
2 of different possible Manville shares for the  
3 negotiation with Mr. Kazan and for each one, the  
4 total value that each would produce and the per-claim  
5 value that each would produce, correct?  
6 A. Yes.  
7 Q. Now, you see that the last page of the  
8 document which is page 2, doesn't have any  
9 handwriting on it, right?  
10 A. I see none.  
11 Q. And the second to last page is the same  
12 basic typewritten text, but it's got some handwriting  
13 on it.  
14 A. Yes.  
15 Q. And what somebody has done is they have  
16 gone through this list of all these different  
17 possible Manville shares from 10 to 35 and they have  
18 in handwriting underlined 30 percent and they have  
19 also put some notations next to 30 percent and 35  
20 percent.  
21 A. I see that.  
22 Q. Okay. All I'm asking you is are you aware  
23 of anywhere we can go to find an actual market share  
24 analysis that was done by the Trust that would  
25 support picking either the 30 percent market share or

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1 35 percent market share or any other percent market  
2 share?  
3 A. No. I do not.  
4 Q. Certainly if the Trust officers were  
5 following and trust was following the procedure, the  
6 statistical procedure approved by the board of  
7 trustees, somebody should have done a market share  
8 analysis and submitted it for approval that would  
9 support picking one of these market shares, correct?  
10 MR. STENGEL: Objection to the form of the  
11 question.  
12 THE WITNESS: Someone should have.  
13 Someone may have. I have no recollection.  
14 BY MR. BERNICK:  
15 Q. That would have been a reasonable and  
16 responsible and sound procedure, correct?  
17 A. Yes.  
18 MR. STENGEL: Objection.  
19 BY MR. BERNICK:  
20 Q. If -- I want you to assume for purposes of  
21 my question, Ms. Smith, that there is no  
22 documentation of such a market share analysis. Would  
23 that have been consistent with good practice of a  
24 trust in resolving claims?  
25 MR. STENGEL: Objection to the form of the

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1 question.

2 THE WITNESS: If one assumes that there  
3 was not any form of statistical analysis, it would  
4 not be good practice.

5 BY MR. BERNICK:

6 Q. Well, my question was really pretty  
7 particular. If there is no documented formal  
8 analysis, would that constitute sound Trust procedure  
9 for resolving claims consistent with the Trust's  
10 fiduciary obligations?

11 MR. STENGEL: Object to the form of the  
12 question.

13 THE WITNESS: The fact there is no  
14 document today does not mean that they had bad  
15 practice at the time. I do not know of the document.

16 BY MR. BERNICK:

17 Q. Let's assume that there was no document at  
18 the time. That there was no formal documented market  
19 share analysis that was done prior to the time that  
20 people met with Mr. Kazan?

21 MR. STENGEL: Objection to the form of the  
22 question.

23 THE WITNESS: I'm not --

24 BY MR. BERNICK:

25 Q. If there was no --

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1 A. I just don't recall.

2 Q. Do you have any recollection, Ms. Smith,  
3 of receiving any memo, this memo or any memo like it  
4 describing the expected negotiations for the pre-c  
5 claims?

6 A. I have no recollection of any specific  
7 memo.

8 Q. Do you have, I'm trying to really broaden  
9 a little bit so I can avoid asking a whole bunch of  
10 questions where you basically said I don't know. I'm  
11 really asking do you have any recollection as you sit  
12 here today of receiving this kind of memo with  
13 respect to any preceding negotiations?

14 A. I received many memos from those people.  
15 This specific form of a memo as I sit here, I do not  
16 recollect it at all.

17 Q. Do you have any recollection as you sit  
18 here today of any documentation created in connection  
19 with the resolution of the pre-c claims?

20 A. Would you state that again, please.

21 Q. Do you have any recollection as you sit  
22 here today of any documentation created in connection  
23 with settling the pre-c claims?

24 A. I have no recollection of any specific  
25 document.

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1 A. I'm just not prepared to assume. That I  
2 just don't know that.

3 Q. I understand that. If it exists, it's  
4 never been produced to us. I will represent that to  
5 you on the record because I'm not aware of it. If  
6 it's been -- if it existed at the time that it has  
7 been destroyed, I would like to know about it from  
8 the Trust. No one has ever told me that either. So  
9 I want to you assume that today and at the time there  
10 was no formal documentation done before the meeting  
11 with Mr. Kazan of a market share analysis for his  
12 claims, would that constitute sound practice of a  
13 trust?

14 MR. STENGEL: Objection to the form of the  
15 question.

16 THE WITNESS: No.

17 BY MR. BERNICK:

18 Q. You were a recipient of this memo,  
19 Exhibit 37, correct?

20 A. It was addressed to me, so I must have  
21 been, I presume.

22 Q. I'm sorry.

23 A. It's addressed to me. Yes.

24 Q. Today, are you saying that you didn't get  
25 this memo, or you just don't recall?

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1 MR. BERNICK: We'll take a break.

2 MR. STENGEL: Sure.

3 THE WITNESS: Okay.

4 THE VIDEOGRAPHER: Off record. End of  
5 tape 1. And the time on the screen is 11:12:42.  
6 (Recess.)

7 THE VIDEOGRAPHER: On record and the time  
8 on the screen is 11:24:58 and this is tape 2.

9 BY MR. BERNICK:

10 Q. Ms. Smith, before we go on another  
11 matters, I want to come back to a point that we  
12 covered early on and ask you for clarification. You  
13 mentioned that yesterday you had asked Mr. Austern to  
14 represent you in connection with this matter.

15 Do you recall that?

16 A. Yes.

17 Q. Is Mr. Austern, are you compensating  
18 Mr. Austern for his activities as your counsel --

19 A. No.

20 Q. -- in connection with this deposition?

21 A. No.

22 Q. I'm sorry? Mr. Weaver, you said that you  
23 believed that he would be compensated for his  
24 activities on your behalf in connection with this  
25 deposition, correct?

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1 A. Yes.

2 Q. Are you paying him or is the Trust paying  
3 him or is somebody else paying him?

4 A. I expect the Trust to pay him.

5 Q. I wanted to turn to what was going on  
6 financially with the Trust in 1988 when it went down  
7 the road to resolving these pre-c claims, and from  
8 that point of view, I want to ask you whether you  
9 recall that the average claim value that was assumed  
10 or projected during the bankruptcy was \$25,000 per  
11 claim, do you recall that?

12 A. Yes, I do.

13 Q. And when you began at the Trust and  
14 started to get up to speed and the process of  
15 resolving the pre-c claims and it went into planning  
16 stage, was that the projected value, per-claim value  
17 of the Trust was using for purposes of its financial  
18 planning is \$25,000 per claim?

19 A. I believe so. I believe so.

20 Q. And the projected number of claims was  
21 something I think you testified a little bit earlier  
22 you weren't completely certain of, of what was in the  
23 multiple tens of thousands?

24 A. Yes.

25 Q. Is it true that the \$25,000 per claim

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1 even before the pre-c settlement discussions began.

2 And his testimony, and I can show it to you if you  
3 want, was that by April of 1988, nobody thought that  
4 the Trust was going to be able to settle its share of  
5 the pre-c claims for \$25,000.

6 Is that consistent or inconsistent with  
7 your own recollection or do you simply not have a  
8 recollection?

9 A. I have no recollection as of April. No.

10 Q. As the pre-c negotiations got under way  
11 during the summer of 1988, I take it that the Trust  
12 began to learn where the expectations of the  
13 plaintiffs' lawyers were, correct?

14 A. Where the expectations of plaintiffs'  
15 lawyers, what it was going to take to settle these  
16 claims.

17 Q. And I take it that as a result of the  
18 discussions with the plaintiffs' lawyers, the Trust  
19 basically came to understand that it was going to  
20 cost an awful lot more than \$25,000 per claim to  
21 resolve the pre-c cases, would that be fair?

22 A. Well, it was going to be more, I don't  
23 know what one means by an awful lot more.

24 Q. Well, do you recall that the estimates by  
25 December of 1988 were in the range of the high

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1 number that the Trust was using early in 1988 was a  
2 number that didn't reflect medical escalation?

3 A. I believe that's right.

4 Q. In other words, Manville had resolved  
5 claims prior to 1982. Those resolutions led to a  
6 projected cost for the Trust of \$25,000 per claim,  
7 but medical escalation had taken place since 1982,  
8 and that wouldn't have been reflected in the \$25,000,  
9 right?

10 A. I think there was medical escalation.  
11 There was general increase of value of dollars,  
12 et cetera. Yes. Inflation, et cetera.

13 Q. And isn't it true that even before the  
14 Trust set about the task of resolving the pre-c  
15 claims, it came to understand that \$25,000 per claim  
16 was too low, that it was going to cost more to  
17 resolve claims than that?

18 A. Well, I don't know at what moment we  
19 concluded that, but certainly when we started trying  
20 to settle claims, it became clear that \$25,000 a  
21 claim was not going to get the job done. We weren't  
22 going to settle for that.

23 Q. I'm just going to ask you whether you  
24 recall this or not. But we asked Mr. Austern what  
25 was understood about the expected value of claims

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1 \$30,000?

2 A. They were in the 30s. Yes. I remember  
3 that.

4 Q. Is it true by the summer of 1988, given  
5 the experience that the Trust was gaining about claim  
6 value, is it true that by the summer of 1988, it  
7 appeared that the Trust would not have enough assets  
8 to pay all of the liabilities that it was going to  
9 face over time?

10 A. Did it become -- it became more -- we  
11 acquired knowledge with each passing day or week, and  
12 we knew more then than we had known before. If  
13 that's what you are asking, was it more apparent?  
14 Yes.

15 Q. Let me just get something for you here.

16 We asked Mr. Austern about what was being  
17 discussed within the Trust in the summer of 1988, and  
18 he testified that there was a discussion in the  
19 summer of 1988 that even after the Trust went through  
20 its cash and then sold its stock, that it would still  
21 have a backlog of unresolved claims, and that that  
22 was being discussed in the summer of 1988.

23 Is that consistent with your own  
24 recollection, that is, as of the summer of 1988,  
25 given the track record on settlement values that

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1 there was discussion of the fact that the settlement  
 2 values might be so high that the Trust would be  
 3 unable to resolve all claims, even after using its  
 4 cash and selling its stock?  
 5 A. I do not have any current recollection of  
 6 a conversation in that summer. I don't know.  
 7 Q. Was it your sense by the summer of 1988  
 8 that the Trust did face a solvency problem in  
 9 resolving all of the claims that it was expected to  
 10 have to resolve?  
 11 MR. STENGEL: Objection to the form of the  
 12 question.  
 13 THE WITNESS: I cannot put a date of that  
 14 summer on it. I just don't know.  
 15 BY MR. BERNICK:  
 16 Q. Well let me just ask you, prior to  
 17 consummation of the plan, were there discussions --  
 18 strike that. Prior to consummation of the plan, were  
 19 there people within the Trust who believed that even  
 20 after it used all of its cash and sold all of its  
 21 stock, the Trust was not going to have enough money  
 22 to pay all the claims it expected to see?  
 23 A. I would have to answer that there was fear  
 24 that that was so.  
 25 Q. Do you recall that presentations were put

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1 time.  
 2 Q. He said that the case average for all  
 3 settlements is about \$37,500?  
 4 A. Yes.  
 5 Q. Which obviously is considerably in excess  
 6 of, considerably in excess of the \$25,000 projection?  
 7 A. Yes.  
 8 Q. Correct?  
 9 A. Yes.  
 10 Q. Do you also -- let me just ask you about  
 11 that a little bit.  
 12 Isn't it true that the claimants' lawyers  
 13 have taken the position that in point of fact these  
 14 claims were resolved at a premium because the  
 15 claimants' lawyers knew that the Trust was anxious to  
 16 resolve these claims and resolve them quickly, that  
 17 they ended up getting a little bit of premium for  
 18 those claims?  
 19 MR. STENGEL: I'm going to object to the  
 20 form of the question.  
 21 THE WITNESS: I don't think so.  
 22 BY MR. BERNICK:  
 23 Q. You are aware of the fact that that's been  
 24 the testimony of some of the claimants' lawyers,  
 25 correct?

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1 together in the fall of 1988 that specifically  
 2 discussed what the financial position of the Trust  
 3 was?  
 4 A. A number of documents were prepared as we  
 5 approached consummation.  
 6 Q. I want to direct your attention to  
 7 Exhibit 17, if you could --  
 8 A. Here. You want that back.  
 9 Q. Do you see that Exhibit 17 are minutes of  
 10 a board of trustees meeting held on October 17, 1988?  
 11 A. I don't see a date. Okay. October 17th.  
 12 The second line. Okay. Yes, sir.  
 13 Q. And a trustees meeting was held on that  
 14 date, correct?  
 15 A. So it states.  
 16 Q. And do you see that Mr. Austern again is  
 17 the signatory to these minutes?  
 18 A. Yes. That's his name.  
 19 Q. And do you see that there is discussion in  
 20 this document about the value of claims that have  
 21 been settled? You see at the bottom of page 4?  
 22 A. I'm looking.  
 23 Q. Mr. Loehr, who is a financial, or is he  
 24 the chief claims officer?  
 25 A. He is the chief claims officer at that

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1 A. I do not know that.  
 2 Q. You have never heard of that?  
 3 A. That that has been their testimony?  
 4 Q. Yes.  
 5 A. I didn't know they testified.  
 6 Q. If you take a look at 131362. You see  
 7 that attached to the board minutes, there are some  
 8 slides or charts dealing with different financial  
 9 matters, including this one that talks about current  
 10 assumptions for numbers of claims?  
 11 A. I see that.  
 12 Q. And the current assumption is that the  
 13 pre-c claims will be settled on average for 37,000?  
 14 A. Yes.  
 15 Q. And that the total number of claims now is  
 16 176,000, do you see that?  
 17 A. This document was prepared prior to  
 18 consummation, right?  
 19 Q. Correct.  
 20 A. Okay. And we are assuming that there is  
 21 going to be 176.  
 22 Q. That's how you read the document?  
 23 A. That's how I read the document. That that  
 24 is an assumption based on something but I don't know  
 25 where it comes from.

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1 Q. Well do you recall that as of the fall of  
2 1988, both the fact, try that, do you recall that by  
3 the fall of 1988, basically the Trust was projecting  
4 that the pre-c cases would cost about \$37,000 apiece  
5 to resolve and that the total number of cases that  
6 the Trust was assuming would ultimately be filed,  
7 number of claims was now way above 100,000?

8 A. I do not recollect that, but I see that  
9 number here, so it must be so.

10 Q. Do you recall or recollect, Ms. Smith,  
11 that by the fall of 1988, basically the Trust was  
12 projecting many more claims than what it had  
13 projected previously?

14 MR. STENGEL: Object to the form of the  
15 question. Would it had projected previously.

16 THE WITNESS: What had been projected  
17 previously? I think the answer is yes.

18 MR. BERNICK: What it had used in its  
19 projections previously.

20 THE WITNESS: I think that the answer is  
21 yes.

22 BY MR. BERNICK:

23 Q. Is it also true that if the fall of 1988,  
24 the Trust was also projecting claim values in excess  
25 of what it had projected previously?

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1 A. Okay.

2 Q. Does that reflect that in this  
3 presentation on October 17, the Trust was being told,  
4 the Trustees were being told that the Trust was  
5 almost out of cash already?

6 A. Of the available cash on hand. Yes.  
7 That's what it says.

8 Q. Was that consistent with your own  
9 recollection?

10 A. That we would have to start moving into  
11 other assets?

12 Q. Yes.

13 A. Yes.

14 Q. If you take a look at 505291.

15 A. 5291.

16 Q. Do you see that as of October 17, 1988,  
17 the projection of a fiscal crisis, that is where the  
18 Trust is going to run out of cash and have to sell  
19 stock, that is now projected as of October to take  
20 place in 1989? That is the first year of Trust  
21 operations?

22 A. Yes.

23 Q. Do you see taking a look at 505306 that  
24 the Trustees were being told in October that it could  
25 take over 30 years to pay claims filed in the first

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1 A. Yes.

2 Q. Now, isn't it true that at the same time  
3 as this board meeting took place, there was also a  
4 fuller financial presentation that was put together  
5 which is Exhibit 16 in your book. You see that's  
6 dated on the same date as the minutes?

7 A. October 17th.

8 Q. In the upper right-hand corner, somebody  
9 has written Trustee Presentation?

10 A. I see it printed there.

11 Q. Do you recall that the financial  
12 performance of the Trust was presented to the  
13 trustees in the fall of 1988?

14 A. I have no specific recollection.

15 Q. Well, I'm going to ask you some particular  
16 questions. If you would take a look at -- I'm going  
17 to give you a bunch of page numbers down at the  
18 bottom and I think if you twist it around so that the  
19 page numbers are towards you, it might be a little  
20 easier. If you look at 505340.

21 MR. STENGEL: 340 or 304?

22 BY MR. BERNICK:

23 Q. 340.

24 A. 505340, right?

25 Q. Yes.

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1 few months of Trust operations?

2 A. That's right.

3 Q. Was that again consistent with your own  
4 recollection of what was being discussed?

5 A. I don't remember it with specificity but  
6 that it could be a very long time if we had enough  
7 income to do it.

8 Q. And that was something that you recall  
9 being discussed pre-consummation in the fall of 1988?

10 A. Well, I don't recall specific conversation  
11 but it's in the documents reflecting that.

12 Q. Is that consistent with your own  
13 recollection?

14 A. I have no recollection of that specific  
15 meeting.

16 Q. No. Not the specific meeting, but do you  
17 recall that pre-consummation, that is in the fall of  
18 1988, there were projections being made to the  
19 trustees that it could take a very, very long time,  
20 years and years and years, to pay the claims filed in  
21 the first few months?

22 A. You are asking me if I have current  
23 recollection of that?

24 Q. Yes.

25 A. No, I don't.

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1 Q. Do you have any recollection of what was  
2 told to the Trustees in the fall of 1988 concerning  
3 the solvency of the Trust, expected solvency of the  
4 Trust?  
5 A. Personal recollection? No, I don't.  
6 Q. Do you have any recollection in the fall  
7 of 1988 of discussions that were taking, discussions  
8 that took place about the possibility that the Trust  
9 would run out of money in 1989, the first year of  
10 operations?  
11 A. When you say run out of money.  
12 Q. Have no cash to pay claims?  
13 A. That the cash that we started off with  
14 would be gone?  
15 Q. Yes.  
16 A. Yes. I remember that.  
17 Q. Okay. Do you recall discussions in the  
18 fall of 1988 that there was a mismatch between the  
19 assets of the Trust and the Trust liabilities?  
20 A. I use that term many times. I don't know  
21 if I used it in '88 but I used it many times, that it  
22 was a mismatch.  
23 Q. Do you recall, did Mr. Austern ever tell  
24 you in the fall of 1988 prior to consummation that in  
25 his view the Trust was insolvent, even before it

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1 opens its doors?  
2 A. I have no recollection of that  
3 conversation specifically. That happened at that  
4 time.  
5 Q. Do you recall Mr. Austern ever telling you  
6 that in his view the Trust was insolvent even before  
7 it opens its doors?  
8 A. I have no personal recollection at this  
9 time.  
10 Q. Do you recall Mr. Austern ever telling you  
11 at any time prior to consummation that the Trust  
12 would not have enough money to pay claims even after  
13 it sold its stock?  
14 A. I have no personal recollection of that  
15 conversation.  
16 Q. Do you have recollection of conversations  
17 with anybody prior to consummation of the plan where  
18 you were told that the Trust was not going to have  
19 enough money to pay claims, even after its stock was  
20 sold?  
21 A. I don't have any current recollection of  
22 that as I sit here today.  
23 Q. Are you denying that any of these  
24 conversations took place?  
25 A. No. I'm not saying they didn't happen.

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1 You asked me if I had recollection and I don't.  
2 Q. I'm not meaning to pester you.  
3 A. No. I'm just saying, I don't.  
4 Q. So Mr. Austern could have told you that in  
5 his view the Trust was insolvent prior to  
6 consummation, you just don't know if that's right or  
7 wrong, you just don't remember?  
8 A. I don't remember.  
9 Q. Do you recall being told by Mr. Austern or  
10 anybody else prior to consummation that to consummate  
11 the plan of reorganization on schedule in November  
12 1988 was just a bad idea?  
13 A. I have no recollection that Mr. Austern  
14 said it was a bad idea. I know we had conversations  
15 about whether or not it was a smart idea, or if there  
16 was any way not to do it or any other kinds of  
17 opportunities for change, but ultimately it was  
18 decided to do it at that time.  
19 Q. But no one ever told you that you recall  
20 the consummation of the plan on time was a bad idea?  
21 A. I don't remember having any recollection  
22 of those words.  
23 Q. Do you recall, let me strike that.  
24 It's true, is it not, to the extent that  
25 the Trust did not have enough money to pay all claims

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1 in full, that there was a conflict of interest that  
2 arose as a result of that?  
3 MR. STENGEL: Objection to the form of the  
4 question.  
5 BY MR. BERNICK:  
6 Q. Let me phrase it and let me ask it more  
7 generally. Obviously the extent that the Trust  
8 didn't have enough money to pay all the claims in  
9 full, and they were going to get paid still on a FIFO  
10 basis, there was a conflict of interest between  
11 people who had early claims and people who had later  
12 claims, correct?  
13 A. There is built-in tension and conflict.  
14 Yes.  
15 Q. Okay. And in fact I think that you have  
16 stated that that conflict of interest is obvious,  
17 that is, where the Trust would not have enough money  
18 to pay all claims in full, there was an obvious  
19 conflict of interest between early claimants and  
20 later claimants? Correct?  
21 A. And unknown futures, yes.  
22 Q. Is it true that that conflict of interest  
23 was discussed, recognized and discussed prior to  
24 consummation of the plan of reorganization?  
25 A. Yes.

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1 Q. In fact, if we take a look at 505310, the  
2 presentation on October 17 specifically talks about  
3 the different positions that different claimants  
4 would have, correct?

5 A. Yes.

6 Q. If you take a look at 505307, it was  
7 recognized that those different positions of the  
8 different claimants meant that there would be major  
9 "inequities" in the payment of pre-c and early post-c  
10 claimants, correct?

11 A. That's what it indicates. Yes, sir.

12 Q. Okay. So even before consummation, the  
13 Trust recognized that if it continued on its course  
14 and consummated the plan on time, that would result  
15 in major inequities, correct?

16 A. Yes.

17 Q. And to the extent that there were major  
18 inequities, there would be conflicts of interest  
19 between different claimants, correct?

20 A. Between the pre-cs, the presents, if you  
21 will and the futures, there was built-in tension and  
22 conflict.

23 Q. Okay. And this is a conflict not just  
24 between people who had claims as of that time and  
25 people who might file in the future, it's between

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1 dealing with this problem, it was a problem, wasn't  
2 it, Ms. Smith?

3 A. Yes.

4 Q. Okay. The options that were considered  
5 for dealing with this problem were first of all, to  
6 get approval for preferential treatment to the pre-c  
7 claims. That was an option, wasn't it?

8 A. I believe that's right.

9 Q. Another option was not to consummate  
10 settlement of the pre-c claims on the terms that had  
11 been agreed, correct?

12 A. I don't recollect. That's possible. I  
13 don't remember.

14 Q. Another option was to delay consummation  
15 of the plan or delay payment to the pre-c claims,  
16 correct?

17 A. That was discussed.

18 Q. Another option was to modify the plan,  
19 right?

20 A. It was talked about.

21 Q. Another option was discussed with the  
22 bankruptcy of the Trust itself, correct?

23 A. Yes.

24 Q. Would you agree with Mr. Austern's  
25 assessment, I'll tell you, this is what he said, that

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1 people who had claims right now, but already had a  
2 claim, a pre-c claim, and those that had a claim  
3 right now but hadn't yet filed it, right?

4 A. That were not included in the pre-'82  
5 groups. Yes.

6 Q. Okay. Now, in light of these inequities  
7 and conflicts of interest that were being discussed  
8 prior to consummation, were there various options  
9 that were taken up for consideration by the Trust?

10 A. Well, it means of delaying payment and  
11 spreading payment out and giving green cards and  
12 buying insurance and all of those kinds of things, a  
13 structured settlement. Yes.

14 Q. Now, you told us that these inequities and  
15 conflicts of interest were being discussed prior to  
16 consummation, correct?

17 A. Yes.

18 Q. Obviously to the extent that there are  
19 discussions of these inequities between current and  
20 future claimants, that means that people back during  
21 this period of time in fact did recognize that the  
22 Trust did not have enough assets to pay everybody the  
23 same way, correct?

24 A. Yes.

25 Q. Now, the options that were considered for

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1 consummation of the plan under the circumstances as  
2 they existed in November 1988 was a bad idea. Would  
3 you agree with that?

4 A. Are you telling me that's what he said  
5 when he testified or are you telling me he said that  
6 at an earlier time.

7 Q. Yes. When he testified.

8 A. Would I agree it was a bad idea for the  
9 consummation to occur then?

10 Q. Yes.

11 A. Probably. Yes.

12 Q. Now, if you -- you don't recall it being  
13 discussed, though, at the time, that consummation on  
14 time and according to plan was a bad idea?

15 A. I don't know that those words were used.  
16 Certainly there was discussion about delaying  
17 consummation at the mere hint of such thing, the  
18 company went into cardiac arrest.

19 Q. Well, we'll talk about what happened. But  
20 you say now testifying that you recognize, yes, you  
21 can say consummation was a bad idea. All I'm asking  
22 you is was the fact that consummation was a bad idea,  
23 was that something that was explicitly discussed  
24 within the Trust at the time?

25 A. Yes.

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1 Q. Okay. Now, in fact, the Trust went ahead  
2 and did consummate the plan on time in November 1988,  
3 correct?

4 MR. STENGEL: Object to the form of the  
5 question.

6 THE WITNESS: Yes, they did.

7 BY MR. BERNICK:

8 Q. Well, consummation occurred on time at the  
9 end of November 1988, correct?

10 A. Yes, it did.

11 Q. And the Trust did not take steps formally  
12 to do anything to oppose consummation at that time,  
13 correct?

14 A. No, it did not.

15 Q. Now, the decision to have the consummation  
16 go forward on time in November of 1988, would it be  
17 fair to say, that was a pretty momentous decision,  
18 was it not?

19 A. It was an important decision. Yes.

20 Q. Well, in point of fact, isn't it true that  
21 the effect of the decision to consummate the plan on  
22 time was first of all to discriminate among  
23 claimants?

24 MR. STENGEL: Object to the form of the  
25 question.

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1 THE WITNESS: It was not a decision to do  
2 that. That may have been a result as you perceive  
3 but it was not a decision to discriminate.

4 BY MR. BERNICK:

5 Q. It was certainly a result of consummating  
6 on time, correct?

7 A. That is one of the results. Yes.

8 Q. And it was known at the time that the  
9 consummation occurred that that result would occur,  
10 correct? Known to the Trust at the time that the  
11 consummation would occur --

12 A. That these documents indicated it was very  
13 likely.

14 Q. -- that there would be discriminatory  
15 result, correct?

16 A. Yes.

17 Q. It was known at the time that consummation  
18 occurred that consummation would result in unfairness  
19 between given claimants, certain claimants, early  
20 claimants versus later claimants, correct?

21 A. The pre-c claimants versus those that were  
22 immediately behind them in the queue, is that what  
23 you are referring to?

24 Q. Yes.

25 A. Yes.

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1 Q. It was known at the time that consummation  
2 took place, that consummation would result in one  
3 method being used to value early claims and another  
4 method being used to value later claims?

5 MR. STENGEL: Objection to the form of the  
6 question.

7 THE WITNESS: That had been part of the  
8 pre-c evaluation discussions, and it was more not so  
9 much how they were evaluated, but how they were going  
10 to be paid.

11 BY MR. BERNICK:

12 Q. Okay. But it was also how they were going  
13 to be evaluated, wasn't it?

14 A. They were going to require a great deal  
15 more information on those claims than the original  
16 one or two pages.

17 Q. So at the time of the consummation the  
18 Trust recognized that consummation on time would mean  
19 the pre-c claims would be evaluated in one way and  
20 later claims would be evaluated in another way,  
21 correct?

22 MR. STENGEL: Objection to the form of the  
23 question.

24 BY MR. BERNICK:

25 Q. Would have that effect?

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1 A. As a result in payment. I don't think  
2 there was all that much difference in the evaluations  
3 of the claims.

4 Q. Well, we just saw that the pre-c claims  
5 were evaluated according to a statistical approach,  
6 correct?

7 A. But they were also looked at individually.  
8 Every claim.

9 Q. Were they evaluate add cording to a  
10 statistical approach?

11 A. Yes.

12 Q. Isn't it true that none of the post-c  
13 claims were evaluated in accordance with any kind of  
14 statistical approach, correct?

15 A. I'm not prepared to say none of them ever  
16 were. I don't know.

17 Q. But certainly at the time that the plan  
18 was consummated on time, the Trust recognized that  
19 the pre-c claims were evaluated in a way that was not  
20 contemplated for post-c claims, correct?

21 MR. STENGEL: Objection to the form of the  
22 question.

23 THE WITNESS: I'm confused by what you are  
24 trying -- what you're seeking.

25 BY MR. BERNICK:



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1 Q. All I'm saying is that the Trust knew at  
2 the time the plan was consummated that the effect of  
3 consummation was that pre-c claims would be evaluated  
4 in a way that was different from what was expected  
5 with respect to post-c claims?

6 MR. STENGEL: Objection to the form of the  
7 question.

8 THE WITNESS: It goes to their payment.

9 BY MR. BERNICK:

10 Q. But it's also the evaluation. Statistical  
11 approach on the pre-c claims, you are not aware of  
12 any statistical approach on the post-c claims, are  
13 you?

14 A. No, I'm not.

15 Q. And that's not in fact how they were  
16 handled, correct?

17 A. I'm not aware of that.

18 Q. All I'm saying is all that was known at  
19 the time that the Trust decided to go ahead and  
20 consummate the plan, right?

21 MR. STENGEL: Objection to the form of the  
22 question.

23 THE WITNESS: I already answered that.

24 BY MR. BERNICK:

25 Q. Let me put it to you this way, Ms. Smith.

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1 foundation for her to testify on that.

2 BY MR. BERNICK:

3 Q. Were you at all familiar with how the  
4 post-c claims were evaluated?

5 A. At the time I was. It's a very long time  
6 ago, and I didn't settle claims.

7 Q. And you were aware of the procedures that  
8 were followed?

9 A. At the time I was. Yes. Of course.

10 Q. All I'm saying is, was it recognized at  
11 the time that the Trust decided to consummate the  
12 plan that different methodologies for evaluation were  
13 going to be followed with respect to pre-c and post-c  
14 claims?

15 MR. STENGEL: Objection to the form of the  
16 question.

17 THE WITNESS: I have not answered that.

18 BY MR. BERNICK:

19 Q. Was it recognized at the time of  
20 consummation that once the pre-c claims were paid  
21 using the, not the detailed review, but the  
22 statistical review, that the Trust would lose its  
23 ability to further inquire into the greater details  
24 surrounding those pre-c claims?

25 MR. STENGEL: Objection to the form of the

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1 No pre-c claim got paid until the plan was  
2 consummated, right?

3 A. That's right.

4 Q. So if the plan were not consummated, the  
5 pre-c claims would not be paid as had been agreed to  
6 during the course of 1988?

7 A. If the plan was never consummated, they  
8 would never be paid. That's exactly right.

9 Q. And by deciding to go forward with the  
10 consummation, one of the effects of that was that the  
11 pre-c claims were going to get paid as they had been  
12 settled, true or not?

13 A. Yes.

14 Q. And it was known at the time that the  
15 decision was made to consummate the plan that the  
16 same thing was not going to be true with respect to  
17 later claims, correct?

18 A. That's right.

19 Q. And that later claims would be handled  
20 according to a different methodology, correct?

21 MR. STENGEL: Object to the form of the  
22 question.

23 BY MR. BERNICK:

24 Q. That's discussed back in April of '88.

25 MR. STENGEL: You still haven't laid a

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1 question.

2 BY MR. BERNICK:

3 Q. Do you understand what I'm asking you?

4 A. You are saying that once they are paid, we  
5 would not have the ability to find out any more about  
6 them?

7 Q. Right. In other words, let me go back  
8 again. At the time that the pre-c claims were  
9 settled, we have seen that a specific approach was  
10 used, and that a detailed individual review was felt  
11 to be infeasible, correct?

12 A. At that time. Yes.

13 Q. And isn't it true that once the pre-c  
14 claims got paid, the Trust would no longer have any  
15 right to go do a further detailed review of those  
16 claims, correct?

17 A. My recollection is they all had to do a  
18 proof of claim form and there was audits done on  
19 them.

20 Q. Do you recall that now, Ms. Houser? I'm  
21 sorry. Ms. Smith. Do you recall that now?

22 A. That's my recollection that people  
23 complained bitterly about having to do proof of claim  
24 forms.

25 Q. Was there proof of claim forms filled out

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1 before or after the deals were reached?  
2 A. It would have to be afterwards.  
3 Q. It had to be afterwards. So all the deals  
4 got struck, there weren't proof of claim forms, they  
5 had been filed --  
6 A. Not the complicated proof of claim form  
7 had not been. That's what we have just been talking  
8 about.  
9 Q. And that basically when claims got  
10 resolved post-c, everybody had to file a proof of  
11 claim form, a detailed proof of claim form before the  
12 Trust even sat down to talk with them, right?  
13 A. Absolutely.  
14 Q. Okay. And that was a different procedure  
15 for the post-c claims than for the pre-c claims,  
16 correct?  
17 A. Yes.  
18 Q. And it was known at the time the plan was  
19 consummated?  
20 A. Yes. Now I understand where you are at.  
21 Q. Now, we are all clear at the time the plan  
22 was consummated, it was known that different  
23 procedures were going to be used to evaluate and  
24 resolve pre-c claims versus post-c claims?  
25 MR. STENGEL: Objection to the form of the

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1 deals was going to be paid according to its terms,  
2 correct?  
3 MR. STENGEL: Objection to the form of the  
4 question.  
5 THE WITNESS: If it passed the audit.  
6 BY MR. BERNICK:  
7 Q. But in point of fact, are you aware of any  
8 situation where any of the auditing information  
9 resulted in changing one iota of any settlement deal?  
10 A. I cannot tell you specifically, but the  
11 point is there was problems when they were audited,  
12 so of course there were. There were things in which  
13 they didn't, you know, they didn't pass muster.  
14 Q. You referred to an audit. Do you know  
15 what that audit was?  
16 A. When the proof of claim form came in, they  
17 had to look at the other stuff to be sure that indeed  
18 they had the proper documentation to back it up.  
19 That's my recollection.  
20 Q. Who told you that?  
21 A. It would have been Paul Loehr. It would  
22 have been Smith. It would have been Feely. It would  
23 have been whoever.  
24 Q. Do you remember? Was that something that  
25 you talked about in the break during the deposition

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1 question.  
2 BY MR. BERNICK:  
3 Q. Right?  
4 A. Different procedures in the sense of when  
5 things got done. Yes.  
6 Q. Okay. And it was known at the time that  
7 the plan was consummated that the effect of  
8 consummation meant that the Trust would no longer  
9 have the ability to go back and renegotiate pre-c  
10 claims on the basis of detailed proof of claim forms,  
11 correct?  
12 MR. STENGEL: Objection to the form of the  
13 question.  
14 THE WITNESS: They had to pass the audit.  
15 Those claims were audited.  
16 BY MR. BERNICK:  
17 Q. But the audit was after the fact?  
18 A. Not after the payment was made.  
19 Q. That's the whole point was that once the  
20 payment was made, no matter what had been learned in  
21 connection with the audit, you couldn't go back and  
22 redo the deal, correct?  
23 A. The audits were made prior to the payment.  
24 Q. Once the decision was made to consummate  
25 the plan, those deals, every single one of the pre-c

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1 this morning?  
2 A. No. No. I did not discuss this, one  
3 word.  
4 Q. Okay. Did they represent to you that the  
5 audit involved a detailed individual-by-individual  
6 evaluation in accordance with the CRP?  
7 A. In the documents you asked me to look at,  
8 okay, it specifically says, that 10 percent of all  
9 claims would be audited and anything over \$50,000  
10 would be audited. I read that here in the documents  
11 that you gave me. I would not have remembered that  
12 in those particular terms, had I known.  
13 Q. Do you know if that was true with the  
14 pre-c claims?  
15 A. What it is referring to is the pre-c  
16 claims.  
17 Q. Do you remember whether that happened in  
18 connection with the pre-c claims?  
19 A. Yes, it did.  
20 Q. Do you remember that?  
21 A. I guess I remember that.  
22 Q. Isn't it a fact that what the audit  
23 procedures were all about was that the Trust after a  
24 deal got done for pre-c claims had the right to go to  
25 the plaintiffs' law firm to look for further

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1 information?

2 MR. STENGEL: Objection to the form of the  
3 question.

4 THE WITNESS: They always had the right to  
5 go to the plaintiffs' law firms and look for  
6 information.

7 BY MR. BERNICK:

8 Q. Do you know whether the audit required  
9 that the Trust officers conduct a case-by-case  
10 evaluation in accordance with the requirements of the  
11 CRP?

12 MR. STENGEL: Objection to the form of the  
13 question.

14 THE WITNESS: I don't know what you are  
15 referring to.

16 BY MR. BERNICK:

17 Q. The CRP we just read required a  
18 case-by-case evaluation, did it not?

19 A. Yes. I don't know what you were talking  
20 about.

21 Q. Do you know whether there was any  
22 procedure was adopted by the Trust which said that  
23 the pre-c claims would be audited in accordance with  
24 the procedures and requirements set out by the CRP?

25 MR. STENGEL: Objection to the form.

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1 consummation at that point in time would be  
2 discrimination among claimants, correct?

3 MR. STENGEL: Object to the form of the  
4 question.

5 THE WITNESS: Yes.

6 BY MR. BERNICK:

7 Q. It knew that another result of  
8 consummation at that time and on that basis would be  
9 inequities between pre-c claimants and post-c  
10 claimants, correct?

11 MR. STENGEL: Object to the form of the  
12 question.

13 THE WITNESS: Yes.

14 BY MR. BERNICK:

15 Q. It recognized that the effect of  
16 consummation was that one method of claims evaluation  
17 would be followed with respect to pre-c claimants,  
18 another with respect to post-c claimants, correct?

19 MR. STENGEL: Objection to the form of the  
20 question.

21 THE WITNESS: I guess.

22 BY MR. BERNICK:

23 Q. And isn't it true, therefore, the plan  
24 required that all settlements by the Trust be fair  
25 and equitable, correct?

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1 THE WITNESS: I do not know of any  
2 document that says that, no.

3 BY MR. BERNICK:

4 Q. Therefore, with regard to the pre-c  
5 claims, are you aware of any procedure that was  
6 adopted by the Trust that applied to the claims  
7 officers which required adherence to the requirements  
8 of the CRP for pre-c claims?

9 MR. STENGEL: Objection to the form of the  
10 question.

11 THE WITNESS: No.

12 BY MR. BERNICK:

13 Q. Now, at the time that the -- I think we  
14 have already established -- let's just take us back  
15 to where we were. At the time that the plan was  
16 consummated at the end of November 1988, the Trust  
17 recognized that the result of consummation was to  
18 produce, I think we have already talked about it,  
19 discrimination among claimants, correct?

20 MR. STENGEL: Objection to the form of the  
21 question.

22 THE WITNESS: At the time of consummation,  
23 the Trust knew -- what, finish your sentence.

24 BY MR. BERNICK:

25 Q. The Trust knew that the result of

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1 A. Yes.

2 Q. Isn't it true that the time that the plan  
3 was consummated in November of 1988, the Trust  
4 recognized that the effect of consummation was to  
5 violate the plan requirement for the settlement to be  
6 fair and equitable? True?

7 MR. STENGEL: Objection to the form of the  
8 question.

9 THE WITNESS: The settlements could be  
10 fair and equitable. It was when the payments were  
11 going to be made was the problem.

12 BY MR. BERNICK:

13 Q. Well, is there a difference to the guy who  
14 gets the money if the payment is different, but the  
15 settlement is the same? Somebody gets the money on  
16 different terms.

17 A. I suspect there is a lot of difference to  
18 that guy.

19 Q. A lot of difference. And in point of  
20 fact, the Trust knew at the time the plan was being  
21 consummated that the settlement, including the terms  
22 of payment, that would result from consummation at  
23 that time, would not be fair and would not be  
24 equitable, correct?

25 MR. STENGEL: Objection to the form of the

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1 question.

2 THE WITNESS: I don't think those terms  
3 were ever used like that, Bob, no.

4 BY MR. BERNICK:

5 Q. Those terms were never used like that?

6 A. No. I have no recollection of anyone  
7 sitting down and saying we are not going to do -- we  
8 are going to do something that is not fair and  
9 equitable.

10 Q. Well, you sat down and you knew at the  
11 time the plan was consummated, that the effect of  
12 consummation on time in November of 1988 was in fact  
13 to produce unfairness and inequity among claimants  
14 because of the funding problem, correct?

15 A. We had a funding problem. That's right.

16 Q. And in that respect, isn't it true the  
17 Trust knew at the time that the plan was consummated  
18 that consummation at that time and on that basis  
19 would result immediately in violation of plan  
20 requirements for fairness and equity, is that true or  
21 not?

22 MR. STENGEL: Objection to the form of the  
23 question.

24 THE WITNESS: Yes. True.

25 BY MR. BERNICK:

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1 one, right?

2 A. They felt that way, I'm sure.

3 Q. Okay. And certainly if the Trustees  
4 wanted to fully discharge their fiduciary obligations  
5 when it came to making significant decisions such as  
6 consummating the plan on time, they certainly could  
7 seek advice of counsel, correct?

8 A. Yes.

9 Q. And if they wanted to seek advice of  
10 counsel they could rely upon for purposes of  
11 satisfying their fiduciary obligations, the way in  
12 which they should do it is to seek an opinion from  
13 counsel to the Trust regarding their duties and  
14 obligations in connection with their decision making,  
15 correct?

16 MR. STENGEL: Objection to the form of the  
17 question.

18 THE WITNESS: How they went about seeking  
19 advice from their own counsel, you'll have to ask  
20 them. I didn't do it. They did.

21 BY MR. BERNICK:

22 Q. They did. Well, but did -- were you  
23 present during board of trustee meetings?

24 A. Of course.

25 Q. And were board of trustee meetings the

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1 Q. Now, it's true, is it not, that the  
2 Trustees had fiduciary obligations?

3 A. Yes.

4 Q. It's true, is it not, that the fiduciary  
5 obligations of Trustees impose upon them a very high  
6 standard of care?

7 A. Common law fiduciary responsibility of the  
8 trustee is high. Yes.

9 Q. In fact, it's the highest obligation known  
10 in the law, is it not?

11 A. It's very high.

12 Q. Is there any higher obligation that you  
13 know in the law than the obligation of a fiduciary?

14 A. I think not.

15 Q. Now, the fiduciary -- the Trustees with  
16 these fiduciary obligations did have the benefit of  
17 significant resources at their disposal to make sure  
18 that they were able to do their job, correct?

19 A. Yes.

20 Q. And among the resources available to the  
21 fiduciaries were access to lawyers, right?

22 A. Yes.

23 Q. In fact, there were probably so many  
24 different lawyers surrounding the Trustees that they  
25 probably couldn't turn around without knocking into

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1 venue and the time at which all decisions by the  
2 Trustees affecting trust activities were to be made?

3 A. Yes. Yes. I guess that's right.

4 Q. And you were present in those trustee  
5 meetings?

6 A. Yes.

7 Q. During 1988, correct?

8 A. Yes. Yes.

9 Q. And you heard all of the matters that we  
10 have been talking about concerning consummation of  
11 the plan discussed, correct?

12 A. Yes.

13 Q. And all I'm asking you is if the Trustees  
14 wanted to satisfy their fiduciary obligations in  
15 making decisions about consummation, isn't it true  
16 that lawyers who could give them advice on their  
17 obligations were available to them?

18 A. That's right.

19 Q. And if they wanted to be able to rely upon  
20 that advice, they had to seek out opinions of counsel  
21 to the Trust so that they could rely upon those  
22 opinions, correct?

23 MR. STENGEL: Objection to the form of the  
24 question.

25 THE WITNESS: That is the way for people

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1 to get information from lawyers is ask for their  
2 opinions. That's right.

3 BY MR. BERNICK:

4 Q. Now, are you aware of any formal opinion  
5 that was offered by any lawyer to the Trust, that's a  
6 lawyer acting on behalf of the Trust or the Trustees,  
7 were you aware of any formal opinion which said that  
8 the Trust was obligated to go forward with  
9 consummation of the plan on time?

10 A. No, I am not.

11 Q. Are you aware of anybody acting for or on  
12 behalf of the Trust who performed a legal analysis as  
13 to whether the Trust was obliged to proceed with  
14 consummation on time in the fall of 1988?

15 A. No, I'm not.

16 Q. Are you aware of anybody who did any kind  
17 of legal analysis that was brought to the attention  
18 of the Trust in the fall of 1988, which legal  
19 analysis said that the Trust was obliged to proceed  
20 with consummation on time?

21 A. No, I'm not.

22 MR. STENGEL: Object to the form of the  
23 question.

24 BY MR. BERNICK:

25 Q. Now, was any -- strike that. You were

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1 the regular record of pleadings, the public record in  
2 connection with the bankruptcy?

3 A. I think that would be right. Yes.

4 Q. And anybody who would want to know what  
5 was happening in the bankruptcy with regard to the  
6 Manville Trust could go to that court record and look  
7 up that report, correct?

8 A. Yes.

9 Q. And the report to the Court in November  
10 1988 by the Manville Trust was pre-consummation,  
11 correct?

12 A. I -- yes. I presume it was. Yes.

13 Q. And that was the Trust's authorized  
14 statement to the Court on the status of its  
15 activities, correct?

16 A. It was our quarterly report and then the  
17 one had consummation, yes.

18 Q. Okay. All right. Isn't it true in making  
19 that report and filing that report the Trustees had  
20 fiduciary obligations to be accurate, truthful and  
21 complete in reporting trust activities?

22 MR. STENGEL: Objection to the form of the  
23 question.

24 BY MR. BERNICK:

25 Q. As you understood it?

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1 familiar, were you not, in the fall of 1988 prior to  
2 consummation with the fact that Judge Lifland was the  
3 bankruptcy judge who sat in connection with the  
4 Manville bankruptcy?

5 A. Yes.

6 Q. And prior to consummation, isn't it true  
7 that he was the bankruptcy judge responsible for the  
8 Manville plan of reorganization and the Manville  
9 plan?

10 A. Yes.

11 Q. And do you know who the district court  
12 judge was who sat as the Article 3 judge in  
13 connection with the Manville reorganization?

14 A. No.

15 Q. It's true, is it not, that the Trust never  
16 took steps formally before the court to seek relief  
17 from consummation of the plan on time and according  
18 to its terms, correct?

19 A. It did not.

20 Q. In fact, there was a formal report that  
21 was filed with Judge Lifland in November of 1988,  
22 correct?

23 A. Yes.

24 Q. And isn't it true that the report to Judge  
25 Lifland as a formal report would have been part of

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1 A. As I understood it then and now, the  
2 Trustees had an obligation to report to the Court  
3 quarterly and submit certain required information and  
4 they did.

5 Q. And when they did that, they were obliged  
6 as Trustees and as fiduciaries to be accurate and  
7 candid and complete with the court regarding  
8 significant matters that pertained to the Trust,  
9 correct?

10 MR. STENGEL: Objection to the form.

11 THE WITNESS: I'm troubled with the word  
12 candid. They had obviously an obligation to be  
13 honest, tell the truth.

14 BY MR. BERNICK:

15 Q. Well, is there a difference between  
16 honesty and being candid?

17 A. Oh, I think so.

18 Q. When it comes to being a trustee, it's the  
19 highest obligation if the Trustees had a problem with  
20 what was happening with the Trust or what was going  
21 to happen to the Trust, it was their obligation to  
22 report it openly and formally in the reports to Judge  
23 Lifland, correct?

24 MR. STENGEL: Objection to form.

25 THE WITNESS: They had an obligation to

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1 submit a report every quarter and at the time of  
2 consummation, yes, and it's their obligation to be  
3 truthful and honest, yes.  
4 BY MR. BERNICK:  
5 Q. Okay. Isn't it true that none of the  
6 reports made to Judge Lifland, none of the written  
7 reports made to Judge Lifland prior to consummation  
8 said anything about conflicts of interest or  
9 inequities, correct?  
10 A. I have no recollection what those reports  
11 specifically said.  
12 Q. Are you aware of any reports that said  
13 there was going to be a fiscal crisis?  
14 A. I'm not aware of it. I have no  
15 recollection at this time what those reports said.  
16 Q. Do you have any recollection of anyone  
17 telling Judge Lifland formally and in an open way  
18 that this Trust, if the plan were to be consummated  
19 on time, consummation would result in inequities and  
20 discrimination?  
21 A. I have no recollection of a formal  
22 statement.  
23 Q. Now, was there any report to Judge  
24 Lifland, a formal and open report, matter of record,  
25 any kind of report at all that described to Judge

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1 outspoken person.  
2 Would that be a fair reputation?  
3 A. Probably.  
4 Q. Okay. And that's certainly a reputation  
5 that you enjoyed before you came on board the  
6 Manville Trust, correct?  
7 A. I guess so.  
8 Q. In fact, you have already told us that one  
9 of the reasons were you sought out to become the  
10 executive director was presumably your performance in  
11 testimony before Congress, correct?  
12 A. I think I told you that was how the people  
13 at ATLA happened to know of me. Yes.  
14 Q. I'm sorry. You are correct. That's one  
15 of the reasons you were hired by ATLA was you were an  
16 outspoken and articulate person, correct?  
17 A. Reasonably so.  
18 Q. Made a good presentation, right?  
19 A. I believe. Yes.  
20 Q. And not only are you good at making  
21 presentations, but he it comes to your activities in  
22 connection with the Manville Trust, isn't it true  
23 that from 1988 all the way through 1991, each and  
24 every year, you made public presentations regarding  
25 trust activities?

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1 Lifland a mismatch of assets and liabilities?  
2 MR. STENGEL: Counsel, you sort of shifted  
3 to what kind of report. You said any kind of report  
4 at all. Is that still modified by formal, open court  
5 report?  
6 BY MR. BERNICK:  
7 Q. Formal and open.  
8 A. I have no such recollection.  
9 Q. Ever any report that anybody could get  
10 access to?  
11 A. I have no such recollection.  
12 Q. Let me just finish the question so that we  
13 are sure we are.  
14 Do you recall any report that anybody  
15 could get access to that was made to Judge Lifland  
16 prior to consummation which disclosed the Trust's  
17 understanding of potential inequities or mismatches  
18 of assets and liabilities?  
19 A. I have no recollection.  
20 MR. STENGEL: Objection to the form of the  
21 question.  
22 BY MR. BERNICK:  
23 Q. Let me ask you, you have got the  
24 reputation that's been reported on paper in  
25 presentations that have been made of being an

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1 A. Many of them.  
2 Q. And basically, your profile with the Trust  
3 as the executive director was a prominent and visible  
4 profile, was it not?  
5 A. I guess.  
6 Q. And you took advantage of that in the  
7 sense of speaking out your views on what was  
8 happening in connection with trust matters and trust  
9 activities, correct?  
10 A. At that time.  
11 Q. And this is true, would it be fair to say  
12 that the claimants and their lawyers look to you to  
13 be outspoken and candid with them on what was  
14 happening with the Trust?  
15 A. I can't speak for what they looked to. I  
16 don't know what they looked to.  
17 Q. You don't have any impression of that?  
18 A. I don't know.  
19 Q. Weren't one of the reasons you were hired  
20 was to pursue an open and frank relationship with the  
21 plaintiffs' lawyers and their clients?  
22 A. The best I could but what they saw and  
23 what they looked to, I don't know. I can't speak for  
24 somebody else.  
25 Q. I see. Well, against that backdrop, it's

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1 true, is it not, that as of November 1988 when the  
2 plan was consummated, literally tens of thousands of  
3 claims involving Manville exposures were already in  
4 the litigation system?

5 A. That certainly they were there. Yes.

6 Q. Well, you not only had the pre-c claims?

7 A. Right. But they were all those other  
8 claims that had been filed since 1982.

9 Q. Right.

10 A. That's right.

11 Q. So as of November 1988, the Trust knew  
12 that there were literally tens of thousands of  
13 current claims already in the system and the  
14 expectation of, we have already seen a total of well  
15 over 100,000 total claims that were expected,  
16 correct?

17 A. Uh-huh. Yes, sir.

18 Q. And do you know how many different lawyers  
19 represented all of the different people who were  
20 either current or expected claimants against the  
21 Manville Trust?

22 A. I don't know. I haven't any idea.

23 Q. It would be scored and hundreds of  
24 lawyers?

25 A. It would have been waves, coveys of

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1 Q. And --

2 A. And then after consummation, we had to  
3 select counsel.

4 Q. So the Trust dealt with about 25  
5 plaintiffs' lawyers prior to consummation?

6 A. They were an official committee. We dealt  
7 with more lawyers than that, I'm sure, but that was  
8 official committee that they met on a regular, once a  
9 month, I suppose or twice a month sometimes in New  
10 York, and I was a -- did cameo appearances at their  
11 committee meetings and left.

12 Q. Do you know, did you sit down with any of  
13 the members of the committee of 25 lawyers,  
14 plaintiffs' lawyers prior to consummation and explain  
15 to them how consummation would result in inequities  
16 and discrimination?

17 MR. STENGEL: Objection to the form of the  
18 question.

19 BY MR. BERNICK:

20 Q. Did you do that?

21 A. I remember meeting with Stan Levy on a  
22 regular basis to discuss the fact that we were going  
23 to have problems, the cash flow problems were  
24 apparent and, the difficulties that were being  
25 developed. He was chair of that committee. He was

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1 lawyers. I don't know how many represented them.

2 Q. And at the time that the plan was  
3 consummated, isn't it true that the Manville Trust  
4 had a course of dealing or communication with certain  
5 plaintiffs' lawyers, correct?

6 A. We had a committee, as you pointed out  
7 earlier, the select committee.

8 Q. Right.

9 A. It was their obligation to communicate  
10 with the claims bar.

11 Q. Well, let me pursue that a little bit.  
12 They were the people that you dealt with and how many  
13 of them were there?

14 A. I think there were three.

15 Q. Three. Now, was that committee in  
16 existence before consummation?

17 A. I don't remember. I don't think so.

18 Q. I'm not sure that the select council  
19 committee --

20 A. No. Prior to consummation, we still had  
21 to deal with the bankruptcy committees.

22 Q. Bankruptcy committees.

23 A. And that would have been about 25 lawyers.

24 Q. 25 lawyers?

25 A. And the plaintiffs' group.

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1 also on the board of Manville after consummation, so  
2 he was involved in all of this.

3 Q. Do you know what communications, if any,  
4 Mr. Levy or any other plaintiffs' lawyer undertook to  
5 pass the information on to other, to claimants?

6 A. Personal knowledge, no.

7 Q. Are you aware of any formal communication  
8 that was made with the claimants themselves prior to  
9 consummation that described the Trust's views of the  
10 inequities and discrimination that would result from  
11 consummation of the plan?

12 A. I have no such knowledge.

13 Q. Have you ever seen any documentation of  
14 communications with the claimants themselves to tell  
15 them what was going on?

16 A. No. I have not.

17 Q. Well, certainly there was an easy way in  
18 which the Trust could make sure that all claimants  
19 had access to information about the funding problems  
20 that the Trust faced before consummation, wasn't  
21 there?

22 A. I don't know of an easy way. I'm sure  
23 there were ways.

24 Q. All that the Trust had to do was to file a  
25 report in the bankruptcy court that fully and

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1 accurately described funding problems and the  
2 inequities that were expected. That would have been  
3 an easy way of assuring that there was a public  
4 record available to everybody with the Trust's views,  
5 correct?

6 MR. STENGEL: Objection to the form.

7 THE WITNESS: A public record that's  
8 available is different than an easy way to  
9 communicate with all the claimants. That's not the  
10 same thing.

11 BY MR. BERNICK:

12 Q. It's a minimum to have a report.

13 A. That could have been done. Yes.

14 Q. I'm sorry?

15 A. That would have accomplished the purpose  
16 of a public record, yes.

17 Q. And if you wanted to have a reachout  
18 program that assured that information got into the  
19 hands of claimants, that is preconfirmation, all that  
20 the Trust had to do was to issue a press release or a  
21 public statement. You have done those things before,  
22 haven't you?

23 A. Yes, I have.

24 Q. In fact, in 1988, you gave public  
25 interviews, correct?

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1 A. From time to time.

2 Q. All you had to do prior to consummation if  
3 you wanted to communicate to claimants about the  
4 threatened inequities and discrimination was to pick  
5 up the phone and ask for an interview with any  
6 newspaper or any publication and you would have been  
7 interviewed and you could have described your views,  
8 correct?

9 A. I could have. Yes.

10 Q. Now, did the Trust discuss taking steps to  
11 communicate to claimants the Trust's views on its  
12 funding problems prior to consummation in November of  
13 '88?

14 A. I have no specific recollection of such a  
15 conversation.

16 Q. Do you recall any discussions with the  
17 Trust or Trust employees about filing a formal  
18 request with the court to delay consummation?

19 A. I remember conversations about seeking  
20 delay in consummation, and that the conclusion was  
21 not to do so based primarily on the fact we had to  
22 carefully guard the value of the asset, and that was  
23 a prime importance and that any of these kinds of  
24 things which could significantly decrease the value  
25 of the asset.

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1 Q. So was that the basis for the decision,  
2 was it not?

3 A. It was certainly a big part of it.

4 Q. But what you are saying there, that was  
5 the basis of the decision not to ask the court to  
6 delay consummation?

7 MR. STENGEL: Objection to the form of the  
8 question.

9 THE WITNESS: It was a major part of that  
10 decision. Yes.

11 BY MR. BERNICK:

12 Q. Do you recall any other reason for the  
13 decision?

14 A. Not at this moment. That's the one that  
15 stands out in my mind.

16 Q. Okay. And is it true that what you are  
17 really saying then is that the Trust got together,  
18 thought about delaying consummation and decided that  
19 if you delayed consummation, it would threaten the  
20 value of Manville stock?

21 MR. STENGEL: Objection to the form of the  
22 question.

23 THE WITNESS: Yes.

24 BY MR. BERNICK:

25 Q. True?

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1 A. Yes.

2 Q. And rather than threaten the value of  
3 Manville stock, the Trust decided it was better to  
4 proceed with consummation even though the result was  
5 expected to be treating the claimants inequitably?

6 MR. STENGEL: Objection to the form of the  
7 question.

8 BY MR. BERNICK:

9 Q. Fair?

10 A. Yes.

11 Q. That balancing process, kind of the pros  
12 and cons, are you aware of any document that sets  
13 that out?

14 A. Not personally aware. No.

15 Q. It's certainly not in any of the minutes,  
16 is it?

17 A. I don't know.

18 Q. Are you aware of meetings that took place  
19 between Mr. Austern, who is sitting here, and Judge  
20 Lifland in the summer of 1988?

21 A. Yes.

22 Q. How did you become aware of that?

23 A. I was often there.

24 Q. You were there at the meeting with Judge  
25 Lifland in the summer of '88?



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1 A. I regularly met with Judge Lifland in '88  
2 and '89, '90.  
3 Q. Tell me how many times you met with Judge  
4 Lifland in 1988?  
5 A. I don't have a specific recollection of  
6 numbers, but I met with him probably once a month,  
7 once every six weeks somewhere in that nature.  
8 Q. And do you have any recollection what you  
9 told Judge Lifland in any of those meetings?  
10 A. We had long conversations about topics  
11 like inadequate funding, about how to -- the  
12 difficulties in trying to administer a plan where the  
13 defendants, co-defendants could pull us into  
14 litigation very quickly after consummation.  
15 The trauma, as he perceived it, if we  
16 changed the plan in any specific kind of way because  
17 then it would require the vote of beneficiaries again  
18 of the bankruptcy and that was a traumatic  
19 suggestion. We have talked about all kinds of  
20 things.  
21 Q. At any point in time, did you actually ask  
22 Judge Lifland not to consummate the plan on time?  
23 A. I certainly remember telling him that we  
24 were contemplating asking for that.  
25 Q. But my question is a little bit different,

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1 which I think you understand. Did you ever formally  
2 ask him in any context to not allow the consummation  
3 to take place on time?  
4 A. I did not formally ask him. No.  
5 Q. Did you ever tell Judge Lifland that you  
6 expected that consummation on time would produce  
7 discrimination or inequities?  
8 MR. STENGEL: Objection to the form of the  
9 question.  
10 THE WITNESS: I told him, I don't know  
11 that I used those words. I told him of the obvious  
12 mismatch, and I told him of the obvious delay of  
13 payments and the difficulty of trying to marshal the  
14 moneys before it had to be done.  
15 BY MR. BERNICK:  
16 Q. You told him that before consummation?  
17 A. Yes.  
18 Q. How many times did you tell him?  
19 A. I don't have I have recollection how many  
20 times. It was certainly more than one.  
21 Q. Was there anyone ever present for any of  
22 these meetings?  
23 A. David was there.  
24 Q. Anyone else?  
25 A. Dick Kleinman may have been; I'm not

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1 certain.  
2 Q. Well, I want to know people that you  
3 recall being there. Is anyone there that you recall  
4 being there other than Mr. Austern?  
5 A. Yes. Matt Gluck.  
6 Q. How many times?  
7 A. Three, five. I don't know. It's several.  
8 Q. Anyone else?  
9 A. It's easier with Matthew.  
10 Q. So it was about once a month that you had  
11 a meeting with Lifland, people would show up,  
12 Mr. Austern, Mr. Gluck for these sit-down sessions  
13 with Judge Lifland?  
14 A. The typical scenario was I would fly up,  
15 Lifland and I would have lunch, with David Gluck with  
16 us, the three of us would have lunch, come back to  
17 the office and met.  
18 Q. Are you aware of anybody who during any of  
19 these meetings prior to November of '88 actually  
20 asked Judge Lifland to delay consummation of the  
21 plan?  
22 A. I don't know that the words please do this  
23 were said. There was no formal filing, if that's  
24 your request.  
25 Q. No. But I'm asking whether at any of

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1 these meetings, you sat down, we already know what  
2 your testimony is, that anybody asked Judge Lifland,  
3 judge, delay the consummation of the plan, don't  
4 consummate it on time?  
5 A. No, I do not.  
6 Q. Okay. Now, are you aware of any record  
7 that was created of any of these meetings with Judge  
8 Lifland?  
9 A. No.  
10 Q. Is there any piece of paper that can you  
11 point to anywhere in existence or that ever was in  
12 existence that recorded these meetings with Judge  
13 Lifland?  
14 A. Not that I know about at this time.  
15 Q. Were there matters pending before Judge  
16 Lifland at the time of any of these meetings?  
17 A. There was no --  
18 MR. STENGEL: Objection to the form of the  
19 question.  
20 THE WITNESS: There was no litigation at  
21 that time. It was pre-consummation.  
22 BY MR. BERNICK:  
23 Q. Well, but the plan that Judge Lifland had  
24 approved was being contested, wasn't it? There were  
25 objections to the plan of reorganization that were on

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1 appeal, correct?  
2 A. I think those were resolved by then,  
3 weren't they? I believe.  
4 Q. They weren't resolved until October of  
5 1988, correct?  
6 A. Maybe that's right. I guess you are  
7 right. I don't remember.  
8 Q. Did anyone ever tell you about whether the  
9 context, would anyone do an analysis to determine  
10 whether the contacts were Judge Lifland were  
11 improper?  
12 MR. STENGEL: Objection to the form of the  
13 question.  
14 THE WITNESS: There was discussion about  
15 that.  
16 BY MR. BERNICK:  
17 Q. Well, what was discussed about that?  
18 A. It certainly was one of my queries. You  
19 know, how far is this going toward an ex parte  
20 conversation and my general counsel who was an expert  
21 on ethics told me that it was not a problem, or if it  
22 was, it was not a problem.  
23 Q. If Mr. -- or that what?  
24 A. If it was, it was not a problem. I think  
25 that's the way it was described. If it was ex parte.

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1 I don't really remember his exact answer.  
2 Q. That was Mr. Austern?  
3 A. Yes.  
4 Q. Did he ever do a memo or a piece of  
5 writing that analyzed that question for you?  
6 A. I don't know. I don't have any  
7 recollection if he did. I don't know.  
8 Q. Well, you know that generally to go and  
9 talk to a judge who's sitting in a case that you've  
10 got before him about matters that pertain to the case  
11 certainly raises a question about whether you have an  
12 improper ex parte contact, correct?  
13 A. Yes, I'm aware of that.  
14 Q. That's pretty obvious, isn't it?  
15 A. Yes. I think so.  
16 Q. And you are telling me that you never  
17 asked Mr. Austern to do the research and to come up  
18 with a letter or a memo that would satisfy you that  
19 you were in compliance with your ethical obligations?  
20 You never did that?  
21 A. If I did, I don't remember it.  
22 Q. Did he ever tell you that in his own view  
23 these contacts were very close to the line of being  
24 improper?  
25 A. I don't recollect what he said. I know

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1 we've talked about it but I don't remember the  
2 conclusions. I really don't. I know we continued  
3 doing it. We must have thought it was all right.  
4 Q. Just because you continued doing it?  
5 A. Well, we must have thought it was all  
6 right or we wouldn't have continued doing it, would  
7 we?  
8 Q. Did he tell you that he testified that he  
9 thought it was close to the line?  
10 A. No.  
11 Q. After the -- when was it, when did the  
12 board make the decision or did the board make the  
13 decision at any particular time to go ahead and  
14 proceed with consummation of the plan on time?  
15 MR. STENGEL: Objection to the form of the  
16 question.  
17 THE WITNESS: Are you asking me was there  
18 a vote of the board to do that?  
19 BY MR. BERNICK:  
20 Q. Yes.  
21 A. I have no recollection that there was.  
22 Q. You've described that there was this kind  
23 of recognition or kind of balancing, on the one hand,  
24 if you didn't go forward with consummation, it would  
25 hurt Manville stock, on the other hand, if you did go

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1 forward, it could have this discriminating effect.  
2 Which meeting was that discussed, or was it discussed  
3 at more than one meeting?  
4 A. I think it was discussed many times. It  
5 would be impossible for me to say which one but it  
6 was an ongoing topic of conversation because the CEO,  
7 chairman of the board, and general counsel of the  
8 company never let us forget that that was an  
9 important issue.  
10 Q. And would you have expected that  
11 conversation, that is, the effect of not proceeding  
12 with consummation, the effect of proceeding with  
13 consummation on claimants, would you have expected  
14 that those discussions were important enough to have  
15 made their way into the minutes?  
16 A. I don't know if they are there or not.  
17 They may be.  
18 Q. They certainly were important enough to be  
19 included in the minutes, correct?  
20 A. I would think so.  
21 Q. Let me go through a series of things.  
22 These contacts with Judge Lifland, isn't it true that  
23 there is not one word of those contacts with Judge  
24 Lifland in any of the court records?  
25 A. I'm sure that's true. I suspect that's

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1 true. I believe it.  
 2 Q. Isn't it true there is not one word of the  
 3 contacts with Judge Lifland in any of the Trust's own  
 4 reports to Judge Lifland?  
 5 A. I'm sure that's right.  
 6 Q. Isn't it true that there is not one word  
 7 of the contacts with Judge Lifland in any of the  
 8 Manville board minutes?  
 9 A. That I don't know. But I'd have to look.  
 10 I don't know.  
 11 Q. Did you review the board minutes after  
 12 they came out?  
 13 MR. STENGEL: The Manville board meeting?  
 14 BY MR. BERNICK:  
 15 Q. Manville board minutes. I'm sorry. The  
 16 Manville Trust board minutes.  
 17 A. At the time I'm sure I did. I don't  
 18 remember what they said.  
 19 Q. Isn't it true that there is not one word  
 20 about the meetings or contacts with Judge Lifland in  
 21 any of the Manville Trust board minutes?  
 22 A. I don't know.  
 23 Q. Isn't it true that there is not one  
 24 document that was created by the Trust that reflected  
 25 the contents of your contacts with Judge Lifland?

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1 A. I don't know the answer to that either. I  
 2 don't remember.  
 3 Q. You have talked about the fact that  
 4 Manville objected to any prospect of consummating,  
 5 delaying consummation of the plan, right?  
 6 A. Yes. I certainly did.  
 7 Q. Yeah. The same thing is true of the  
 8 plaintiffs' lawyers; that they didn't want to delay  
 9 the consummation either?  
 10 A. That's right.  
 11 Q. So there are people who have kind of  
 12 weighed in on the question of whether the  
 13 consummation should be delayed, correct?  
 14 A. They had very strong opinions. Yes.  
 15 Q. Okay. Are you aware of any documentation  
 16 of those objections by Manville or by the plaintiffs'  
 17 lawyers, any documentation of those objections in any  
 18 of the board minutes?  
 19 A. I'm not personally aware. No.  
 20 Q. Are you aware of any document that's ever  
 21 been created by the Trust that reflects those  
 22 objections?  
 23 A. I have no personal knowledge. No.  
 24 Q. Let's talk about the advice that the board  
 25 got on the question of whether consummation should

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1 proceed. Are you aware of any document that reflects  
 2 any kind of advice received by the trustees on the  
 3 question of whether consummation should proceed?  
 4 A. I have no personal knowledge.  
 5 Q. Do you recall anything at all that was  
 6 documented concerning advice?  
 7 A. I have no recollection.  
 8 Q. Let's talk about the decision to proceed  
 9 with consummation. Are you aware of any board minute  
 10 or any piece of paper that in any way, shape, or form  
 11 actually reflects the decision-making of the Trustees  
 12 to proceed with consummation of the plan on time?  
 13 MR. STENGEL: Objection to the form of the  
 14 question.  
 15 THE WITNESS: I have no personal  
 16 information.  
 17 BY MR. BERNICK:  
 18 Q. Do you have any recollection of that at  
 19 all?  
 20 A. No recollection. No, I'm sorry.  
 21 Q. Let me just ask you, as we went forward  
 22 after consummation, it's true, is it not, that there  
 23 were continuing, that there were continuing  
 24 discussions about whether to ask Judge Lifland to  
 25 stay execution of the plan because the Trust couldn't

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1 handle all the litigation?  
 2 MR. STENGEL: Objection to the form of the  
 3 question.  
 4 THE WITNESS: I think that's right.  
 5 BY MR. BERNICK:  
 6 Q. In other words, after the consummation  
 7 took place the claims started to come in and the  
 8 litigation started, later on in 1989, to start to  
 9 roll in, correct?  
 10 A. The claimants didn't initiate very much  
 11 litigation. Very little from the claimants.  
 12 Q. But the other company --  
 13 A. Co-defendants.  
 14 Q. -- the other asbestos companies started  
 15 to --  
 16 A. That's right. As co-defendants.  
 17 Q. And the Trust at that time considered  
 18 whether to ask for court intervention, correct?  
 19 A. As I recollect, that's right.  
 20 Q. And in point of fact, until Judge  
 21 Weinstein stepped in on his own in the middle of  
 22 1990, the Trust never asked for court intervention to  
 23 put a stop to the litigation or a stop to payment  
 24 obligations, correct?  
 25 A. No. We did not formally seek a stay.

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1 Q. Okay. And no formal report was made to  
2 the Court prior to the time that Judge Weinstein  
3 stepped in in 1990, no formal report was made to the  
4 Court that expressed the Trust's concerns that it was  
5 running out of money, correct?

6 MR. STENGEL: Object to the form of the  
7 question.

8 THE WITNESS: I can't speak -- I'm not  
9 certain about that. I don't know. I don't remember.

10 MR. BERNICK: Were there more --

11 THE WITNESS: -- whether it was or it was  
12 not. The documents would have to indicate that.

13 BY MR. BERNICK:

14 Q. Was there more contacts with Judge Lifland  
15 after consummation?

16 A. Yes.

17 Q. Is there any record that was ever kept to  
18 your knowledge of any of those contacts?

19 A. No.

20 Q. Let me ask you something. You personally  
21 had files from the, your activities at the Manville  
22 Trust, correct?

23 A. That I have personal files? Yes. Sure.

24 Q. You kept personal files while you were at  
25 the Trust, right?

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1 Q. After consummation -- strike that. Did  
2 you ever have a discussion with Mr. Austern or anyone  
3 else at the Trust about not recording in the minutes  
4 discussions about whether to consummate the plan on  
5 time?

6 A. No, I do not.

7 Q. Do you recall having discussions with  
8 Mr. Austern about whether not to record in the  
9 minutes the Trust's decision to not seek court relief  
10 after consummation?

11 A. No. I do not.

12 Q. I need to ask you a few questions about  
13 this period of time after consummation and maybe  
14 we'll take a break for lunch if that's appropriate.

15 MR. STENGEL: Okay.

16 BY MR. BERNICK:

17 Q. The Trust gets consummated, the plan gets  
18 consummated at the end of November 1988, right?

19 A. Yes, sir.

20 Q. And at that point the claims start to come  
21 in to the Trust, right?

22 A. We started receiving claims after  
23 consummation, so yes, in January or February,  
24 something like that was when we really started  
25 getting claims.

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1 A. Sure.

2 Q. And is it true that after you left the  
3 Trust, you took some of your personal files with you?

4 A. I took two small boxes of files. Yes.

5 Q. Do they still exist today?

6 A. No, sir. They don't.

7 Q. Was there some direction or did you ever  
8 discuss with Mr. Austern or anybody else at the Trust  
9 that the contacts with Judge Lifland probably  
10 shouldn't be recorded in any of the Trust's meeting  
11 minutes? Did you ever talk about that with Mr.  
12 Austern?

13 A. I have no recollection of that  
14 conversation at all.

15 Q. Did you ever talk with Mr. Austern about  
16 whether the contacts with Judge Lifland should  
17 basically not be written down anywhere? You ever  
18 talk about that with Mr. Austern?

19 A. No. I have no recollection of such a  
20 conversation. No.

21 Q. Do you deny that such a conversation took  
22 place?

23 A. I'm telling you I have no recollection of  
24 ever having such a conversation about whether or not  
25 I should or should not write something down.

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1 Q. And the claim volume swelled throughout  
2 1989, correct?

3 A. I think that's right.

4 Q. And basically the claim volume was so  
5 enormous that the Trust literally could not keep pace  
6 in settling all the claims, correct?

7 A. Oh, that's right.

8 Q. And a backlog developed, correct?

9 A. Yes.

10 Q. And it grew, correct?

11 A. That's right.

12 Q. And the Trust's funding problems that you  
13 have described didn't get any better, they got worse?

14 A. They got worse.

15 Q. Okay. And because the Trust's funding  
16 problems were getting worse, the Trust decided to try  
17 to make some contacts with the plaintiffs' lawyers to  
18 convince them of the financial problems with the  
19 Trust, correct?

20 A. That's right.

21 Q. And isn't it true that you have said in  
22 writing that you didn't think that the Trust's  
23 financial problems were appreciated by the  
24 plaintiffs' lawyers until 1990?

25 A. I may have said it in writing in '90 but

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1 certainly it was '89 and '90. Yeah.  
2 Q. And obviously if the plaintiffs' bar  
3 didn't appreciate the Trust's financial problems  
4 until 1989, the plaintiffs' bar didn't appreciate the  
5 Trust's financial problems prior to consummation,  
6 correct?  
7 MR. STENGEL: Object to the form.  
8 THE WITNESS: I don't know what they knew.  
9 But I guess that would have to be so. I mean, one  
10 would follow the other. Yes.  
11 BY MR. BERNICK:  
12 Q. In 1989, in order to convince the  
13 plaintiffs' bar that the Trust's financial problems  
14 were real, you and others went on the road to make a  
15 series of presentations, true?  
16 A. That's right.  
17 Q. That's kind of like, I think it was  
18 sometimes called the road show?  
19 A. Sort of. Yes.  
20 Q. And you went to --  
21 A. We traveled. Yeah.  
22 Q. And you went to different parts of the  
23 country in 1989 and folks who knew the finances of  
24 the Trust made presentations about, basically the  
25 fact that the Trust was never going to have enough

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1 money, it was going to run out, right?  
2 A. That there was an incredible mismatch  
3 between liabilities and funding. That's right.  
4 Q. And the basic effort or the reason why  
5 these presentations were made was to convince the  
6 lawyers that maybe they should hold off their efforts  
7 to press forward on their claims so actively so that  
8 the Trust would have an opportunity to catch up,  
9 right?  
10 A. That's right.  
11 Q. And a person looking at that situation  
12 could say, and fairly so, that once again, that's  
13 kind of asking the fox to guard the hen house, right?  
14 A. I don't see that analogy working there,  
15 but -- I wasn't the only one giving these  
16 presentations, I might add, and so I don't exactly  
17 understand what you are analogy is.  
18 Q. Well. What you are asking the plaintiffs'  
19 lawyers to do is to hold off, forbear from trying to  
20 get the Trust to pay money, right?  
21 A. From forcing us into litigation where we  
22 would have to resort to that as our means of running  
23 the Trust. Yes.  
24 Q. But the plaintiffs' lawyers regarded  
25 litigation as a tool for getting money?

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1 A. Of course.  
2 Q. So your asking the plaintiffs' lawyers to  
3 hold off from taking steps to get money from the  
4 Trust, isn't that a little bit like asking the fox to  
5 guard the hen house?  
6 MR. STENGEL: Objection to the form of the  
7 question.  
8 THE WITNESS: I don't think the analogy  
9 works at all, but your point I presume is that we  
10 were asking them for forbearance and -- that may be  
11 foolish, but it's hardly a fox in a hen house.  
12 BY MR. BERNICK:  
13 Q. Well, I asked Mr. Austern, I said I know  
14 this is a colloquialism, but isn't that like asking  
15 the fox to guard the chicken coop. I guess it wasn't  
16 the hen house; it was the chicken coop. And his  
17 answer was, you mean asking plaintiffs not to file  
18 claims? I suppose it would be characterized that way.  
19 It could be characterized that way, right?  
20 A. Not as I understand the analogy, but that  
21 doesn't make probably much difference.  
22 Q. Well, the net result of all these road  
23 show presentations was it did become pretty apparent  
24 to the plaintiffs' bar that the Trust might run out  
25 of money, right?

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1 A. Yes.  
2 Q. Okay. And the net effect was instead of  
3 holding off in prosecuting their claims, there was a  
4 virtual stampede of claims in 1989, correct?  
5 A. There were an enormous number of claims  
6 filed in 1989. That's right.  
7 Q. And in fact, one of the reasons why there  
8 was a stampede in 1989 was that when the plaintiffs'  
9 lawyers learned when the Trust might run out of money  
10 but was still paying on a FIFO basis, everybody  
11 wanted to get their money before the bank ran out,  
12 right?  
13 MR. STENGEL: Objection to the form of the  
14 question.  
15 THE WITNESS: I don't know what was in  
16 their minds. There was certainly a lot of claims  
17 filed.  
18 BY MR. BERNICK:  
19 Q. Well, but that's, in point of fact, you  
20 have written on the subject of what happened in 1989  
21 and 1990, correct?  
22 A. Yes, I have.  
23 Q. And in fact what you wrote was that it  
24 followed like night and day, that the smart lawyers  
25 would employ every legal effort to get their clients'

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1 claims to the Trust while there was cash available?  
2 A. Yep. I'm sure that's how you said that.  
3 It makes sense to me.  
4 Q. You made that presentation in a seminar  
5 paper that you gave before all kinds of lawyers, the  
6 Andrews Seminar, correct?  
7 A. I don't know where I made it, but I'm sure  
8 that sounds like something I would have said.  
9 Q. And your own assessment was that the  
10 effect of making all these financial presentations  
11 that talk about the Trust running out of money was  
12 that the plaintiffs' lawyers were elbowing one  
13 another to get first in line to get the money before  
14 it ran out, right?  
15 A. I presume that's so.  
16 Q. Well, that's certainly what your analysis  
17 was at the time, correct?  
18 A. Yes. I think that's right.  
19 Q. Now, I believe you told us that no request  
20 was made of the court to give the Trust relief from  
21 these pressures, correct?  
22 A. No. There was no formal request.  
23 Q. Okay. And informally, did you ever ask in  
24 sum and substance, did you ever ask Judge Lifland,  
25 please stop this process?

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1 A. When those conversations occurred about  
2 what the court could do, etcetera it was always put  
3 back that it was inappropriate to do it, it would  
4 require a vote of the beneficiaries to change the  
5 whole plan, he just wouldn't hear of that.  
6 Q. But you never actually asked him to go  
7 ahead and do it anyhow, correct?  
8 A. There was no formal petition filed for  
9 that, no.  
10 Q. But there was no, there was no specific  
11 request that was made even in your informal meeting,  
12 saying, Judge Lifland, we want to you do it anyhow?  
13 MR. STENGEL: Object to the form of the  
14 question.  
15 THE WITNESS: Oh! I don't know if those  
16 words were said. Certainly there was conversation  
17 many times about the fact something has got to be  
18 done about this and you are the only person who can  
19 do it. I can't do it, Judge. You have to do it.  
20 BY MR. BERNICK:  
21 Q. And none of those discussions were ever  
22 recorded anywhere, correct, to your knowledge?  
23 A. Not to my knowledge.  
24 Q. Now, the Trust ended up responding to  
25 docket pressures on its own, correct?

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1 MR. STENGEL: Do you understand the  
2 question?  
3 THE WITNESS: I don't understand what you  
4 mean.  
5 BY MR. BERNICK:  
6 Q. Well, you said you didn't make a formal  
7 request of the court, right?  
8 A. No, I did not.  
9 Q. So the Trust then had to contend with the  
10 volume of claims and the volume of litigation on its  
11 own, right?  
12 A. Yes.  
13 Q. Okay. And one of the ways in which it  
14 contended with the volume of claims and the volume of  
15 litigation was to agree to the consolidation of cases  
16 being brought against it, correct?  
17 A. Yes.  
18 Q. And the idea of agreeing to consolidation  
19 was that it would relieve or reduce the burden to the  
20 Trust of having to defend a whole bunch of individual  
21 cases, you group them all together, you defend them  
22 all at once, right?  
23 A. Yes.  
24 Q. But in point in fact what happened is,  
25 once the cases became consolidated, the plaintiffs

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1 used that as a vehicle for asking for trials and then  
2 asking for settlements of all the cases that were  
3 consolidated, right?  
4 A. If they could put it in those posture.  
5 Yes.  
6 Q. Well, that's exactly what they, did right?  
7 A. Where they could. Yes.  
8 Q. And it got to be so bad that Mr. Austern  
9 communicated to you, saying, we shouldn't agree to  
10 consolidations anymore, right?  
11 A. I think that's -- yes.  
12 Q. And isn't it true that as a result of  
13 these docket pressures, your own people wrote that  
14 the Trust was paying inflated values in order to  
15 resolve claims that were in litigation?  
16 A. To avoid litigation? Yes.  
17 Q. Yes. I'm sorry?  
18 A. To avoid litigation, yes.  
19 Q. And they were right, right?  
20 A. I'm sure they were.  
21 Q. Okay. Now, once again the Trust continued  
22 to pay out money throughout the whole period of time  
23 before Judge Weinstein stepped in, correct?  
24 A. Yes.  
25 Q. And again because there was no relief, the

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1 Trust was obliged to pay 100 cents on the dollar,  
2 correct?  
3 A. If we had it.  
4 Q. So once again, even post-confirmation,  
5 isn't it true that the effect of paying the early  
6 claimants was to create discrimination against later  
7 claims?  
8 MR. STENGEL: Objection to the form of the  
9 question.  
10 THE WITNESS: It added to the mix.  
11 BY MR. BERNICK:  
12 Q. I'm sorry.  
13 A. Each payment, of course, added to the  
14 shift of the mismatch. I'm sorry.  
15 Q. Yes. The mismatch between assets and  
16 liabilities got worse post-confirmation, correct?  
17 A. That's right.  
18 Q. There continued to be inequities between  
19 early claimants and later claimants in terms of how  
20 they were paid?  
21 A. In how they were paid. That's right.  
22 Q. And there continued to be discrimination  
23 between claimants in terms of how they were paid?  
24 A. How they were paid.  
25 Q. And the amounts that they were paid?

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1 Q. The answer to that is yes, correct?  
2 A. Yes. I guess it is. Yes.  
3 MR. BERNICK: Do you want to have some  
4 lunch?  
5 MR. STENGEL: Yeah.  
6 THE WITNESS: Yeah let's do that.  
7 MR. STENGEL: Where are you?  
8 MR. BERNICK: Let's see, it's a little bit  
9 before 1. Quarter to 1. If we can kind of take a  
10 little, however much time you need for lunch. We  
11 ought to go off the record but however much time you  
12 need for lunch, we should take.  
13 THE WITNESS: Okay.  
14 MR. BERNICK: At the same time, if we can  
15 take a shorter lunch, I think I can finish up, you  
16 know, early afternoon.  
17 THE WITNESS: Good.  
18 THE VIDEOGRAPHER: Off record and the time  
19 on screen is 12:52:48.  
20 (Whereupon, at 12:52:48 p.m., the  
21 deposition in the above-entitled matter was recessed,  
22 to reconvene at 1:15 p.m., this same day.)  
23  
24  
25

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1 MR. STENGEL: Objection to the form of the  
2 question.  
3 THE WITNESS: Within time zones, there was  
4 discrimination geographically because who could get  
5 to trial and who couldn't. That's how our court  
6 system works today.  
7 BY MR. BERNICK:  
8 Q. Well, that's how it ended up working under  
9 the plan that was executed, correct?  
10 A. Yes. It's how it works with lots of other  
11 kind of cases in this world, too.  
12 Q. Right. And there was also discrimination  
13 as a result of people being earlier claimants versus  
14 later claimants, correct?  
15 A. Yes.  
16 Q. Okay. Is it also true that no one method  
17 was followed in evaluating claims?  
18 MR. STENGEL: Objection to the form of the  
19 question.  
20 BY MR. BERNICK:  
21 Q. Claims that were in litigation were  
22 resolved in a different way than claims that were not  
23 in litigation, correct?  
24 A. The pressures of the time I guess dictated  
25 that. Um-hmm.

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1 AFTERNOON SESSION  
2 (1:34 p.m.)  
3 Whereupon,  
4 MARIANNA S. SMITH,  
5 the witness on the stand at the time of recess,  
6 having been previously duly sworn, was further  
7 examined and testified as follows:  
8 EXAMINATION BY COUNSEL FOR  
9 DEFENDANT BROWN & WILLIAMSON (RESUMED)  
10 THE VIDEOGRAPHER: On the record. And the  
11 time on screen is 13:34:58. And this is tape three.  
12 BY MR. BERNICK:  
13 Q. Ms. Smith, I want to talk to you a little  
14 bit about the role of the plaintiffs' lawyers in  
15 activities of the Trust before Judge Weinstein  
16 stepped in. Do you remember when it is that Judge  
17 Weinstein issued the stay against further payments by  
18 the Trust?  
19 A. I remember it was during the ALI meeting  
20 in May, must have been of '91. Might have been '90.  
21 I think it was '91.  
22 Q. 1990, would that be --  
23 A. '90, okay. It was May.  
24 Q. The year before you ultimately left?  
25 A. Yes. That would be right. I was there a

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1 year. That's right. Yes.  
2 Q. I think you have noted in your own writing  
3 about the Manville Trust that the plaintiffs' bar,  
4 that is the plaintiffs' lawyers, have been a powerful  
5 influence on Trust activities over time?  
6 A. Uh-huh.  
7 Q. Would that be a fair statement?  
8 A. I think that's fair. Uh-huh.  
9 Q. And the fact that the plaintiffs have been  
10 a powerful influence on Trust activities has created  
11 what you characterize as an irreconcilable conflict  
12 of interest. The Trust is obliged to act in a way  
13 that treats claimants and their lawyers as  
14 beneficiaries, at the same time faces the prospect of  
15 litigation from those same beneficiaries and that  
16 creates a conflict. Would that be a fair statement?  
17 A. It's a very serious conflict. Yes. I  
18 think so.  
19 Q. Are you familiar with the fact that  
20 Mr. Austern concluded, in writing about the  
21 activities of the plaintiffs' lawyers, that they were  
22 guilty of self-dealing in connection with the  
23 resolution of the pre-c claims?  
24 A. I don't remember the use of that word, but  
25 I certainly know that there was, maybe I should ask

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1 you what you are talking about. Maybe I'm confused  
2 what you mean. Excuse me.  
3 Q. Okay. That's a fair question. If you  
4 take a look at Exhibit 35 in your book.  
5 MR. STENGEL: We don't have it.  
6 BY MR. BERNICK:  
7 Q. You don't have 35. Well then, it's hard  
8 to take a look at it.  
9 MR. STENGEL: We can speculate.  
10 THE WITNESS: We can just guess.  
11 BY MR. BERNICK:  
12 Q. That's not really the right one.  
13 A. No. It's Macchiarola.  
14 Q. Do you want to tell me which one? It's  
15 Exhibit 25.  
16 A. Ah, now we're back to this book.  
17 MR. STENGEL: No, we're back to another  
18 book we don't have yet.  
19 THE WITNESS: I see. Don't have the book.  
20 MR. STENGEL: Not far from Dean  
21 Macchiarola, but --  
22 THE WITNESS: This is '95. I would never  
23 have seen this before.  
24 BY MR. BERNICK:  
25 Q. This is not right. This is wrong.

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1 I'm sorry. It's 24, not 25.  
2 A. All right. Go back one. May of '95.  
3 Q. Yes. You see this is a letter that  
4 Mr. Austern wrote to Dean Macchiarola on May 31 of  
5 1995?  
6 A. Yes.  
7 Q. And for your information, are you familiar  
8 with the fact that Dean Macchiarola was in the  
9 process of writing a law review article on the  
10 Manville Trust?  
11 A. No. I did not know that. But I just now  
12 saw the cover so I presume that's what that was when  
13 we were looking for this exhibit.  
14 Q. And I'll represent to you that the draft  
15 of the law review article was sent to Mr. Austern for  
16 review and he wrote this letter in response.  
17 A. Okay.  
18 Q. And he talks about the draft law review  
19 article and if you see on the third paragraph it says  
20 in our case, the unfairness was particularly  
21 perverse. On page C-383 of the Manville  
22 Corporation's second amended and restated plan is a  
23 list of the Asbestos Health Claimants Committee  
24 consisting of 20 asbestos health claimants lawyers,  
25 without exception, these lawyers represented most of

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1 the 17,000 claimants. --  
2 A. Right.  
3 Q. -- who filed lawsuits. It goes on to say  
4 the plaintiff reorganization, insofar as it disposed  
5 of pending asbestos health claims, was in large  
6 measure written and supported by the Asbestos Health  
7 Claimants Committee.  
8 A. That's true.  
9 Q. Do you see that?  
10 A. Yes, I do.  
11 Q. And he goes on to the next page after the  
12 quote to say thus, the Manville plan called for 100  
13 percent payment to the clients who of the attorneys  
14 who are members of the committee. The appearance of  
15 this is unfortunate and the self-dealing is even  
16 worse.  
17 Do you agree or disagree with  
18 Mr. Austern's assessment that the prominent  
19 plaintiffs' lawyers who represented the pre-c  
20 claimants had, were guilty of self-dealing in  
21 connection with both the negotiation of the plan  
22 document and then what became the expedited  
23 resolution of the pre-c claims?  
24 A. I don't know that that's what that refers  
25 to, the expedited resolution of the pre-c claims. I



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1 think he is talking about 100 percent payment for the  
2 clients of those attorneys. I think that's what he  
3 is talking about.

4 Q. Okay. Well, would you agree with  
5 Mr. Austern that the involvement of the plaintiffs'  
6 lawyers both in the drafting of the plan and then  
7 ultimately in the receipt of the 100 cents on the  
8 dollar for their clients' claims, that that  
9 represents self-dealing on their part?

10 A. Well, it certainly has a very bad  
11 appearance.

12 Q. Would you agree that the appearance is  
13 that of self-dealing?

14 A. Well, it may be. Yes.

15 Q. Okay. He goes on to say in the next  
16 document, which is the Exhibit 25, an August 15, 1995  
17 letter, again to Frank Macchiarola, he goes on to  
18 talk about all of the legal fees that have been  
19 earned by the plaintiffs' lawyers and at the end of  
20 the letter, he says: I note that the article remains  
21 untitled, that is, Macchiarola's article. I have  
22 some suggestions for a title. And he goes on to say  
23 I'll restrain myself from offering them to you,  
24 except for one, have you considered Pigs at the  
25 Trough, and that's a pretty obvious reference to the

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1 fact of the plaintiffs' lawyers earning a lot of  
2 fees.

3 A. Well, I don't know what Dean Macchiarola's  
4 article was about but there were lots of pigs at the  
5 trough. They weren't just plaintiffs' lawyers.

6 Q. Just, not just plaintiffs' lawyers?

7 A. No. They came in all different color  
8 suits.

9 Q. Who were some of the other pigs at the  
10 trough?

11 A. I think there were pigs at the trough  
12 representing virtually every group of claimants, not  
13 just the claimants but every group of creditors in  
14 the bankruptcy. I think the bankruptcy lawyers  
15 themselves. I think the lawyers who represented the  
16 futures. There were lots of pigs at the trough.

17 Q. Okay. That's one of the problems the  
18 Trust had, wasn't it?

19 A. Yes. Lots of pigs at the trough.

20 Q. Well, we asked Mr. Austern who the pigs at  
21 the trough referred to, and he said in this  
22 particular case it referred to the plaintiffs'  
23 lawyers?

24 A. I suspect he was in this particular  
25 article.

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1 Q. Okay. And recognizing that you have, you  
2 know, close friends and strong ties among that group  
3 that you have represented in the past, would you  
4 agree that one of the major problems that the Trust  
5 faced was the economic incentives that the  
6 plaintiffs' lawyers had to quickly process their  
7 clients' claims in order to get paid promptly and as  
8 much money as they could?

9 A. No question.

10 Q. Okay. Is it also true that the  
11 determination of the plaintiffs' lawyers, both for  
12 themselves and on behalf of their clients, was so  
13 great that they were prepared to basically take steps  
14 that hastened the depletion of the Trust's assets  
15 just to get their claims paid first?

16 MR. STENGEL: Objection. Lack of  
17 foundation.

18 BY MR. BERNICK:

19 Q. As you understood what was happening in  
20 the Trust at the time.

21 A. I presume you mean they would hasten this  
22 by forcing litigation, if they could get court dates,  
23 they would take them. Is that what you are referring  
24 to?

25 Q. Yes. In point of fact what happened in

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1 1989 was the plaintiffs recognized that if they could  
2 get court dates they would jump ahead of the FIFO  
3 queue, correct?

4 A. Right. Exactly.

5 Q. And the net result was if they could jump  
6 ahead in the FIFO queue with court dates, they would  
7 get settled earlier than they would have been --

8 A. That's right.

9 Q. -- and they would get their money  
10 earlier, right?

11 A. That's right. They could get moved up on  
12 the payment queue.

13 Q. And the plaintiffs' lawyers and the  
14 claimants were so anxious to do that, that they  
15 continued the net, even though they recognized that  
16 the Trust was running out of money and that other  
17 claimants, including maybe some of their own clients  
18 later on, might not get paid the same amount of  
19 money?

20 A. That was their conflict of interest  
21 problem. Yep.

22 Q. And so active was the interest of the  
23 plaintiffs' lawyers to get paid soon, that they also  
24 didn't take your own advice that they ought to slow  
25 down? They didn't really do anything different as a

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1 result of all the road shows that you guys put on in  
2 1989, did they?

3 A. Well, I don't know that they didn't do  
4 anything different, but certainly when they could get  
5 court dates, they took them.

6 Q. Are you aware of anything that they did  
7 differently as a result of any of your entreaties in  
8 1989?

9 A. I know that they took payment over time,  
10 instead of payment demanding cash at the time, and  
11 the reason for the Weinstein cases being a problem  
12 were that those guys in New York wouldn't take  
13 payments. It would never work out like it did if  
14 they would have. Those cases would have been  
15 settled.

16 Q. So basically you had lawyers who were not  
17 even prepared to give the Trust more time to pay.  
18 They still wanted to get their payments right away,  
19 even if it meant that a judge had to step in, right?

20 A. Well, that was the Brooklyn cases. Yes.

21 Q. Okay. Isn't it true that all of the  
22 different alternative payment plans that the Trust  
23 developed before Weinstein stepped in were all  
24 objected to by the claimants' lawyers in principal  
25 part?

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1 A. Some group of them I'm sure objected to  
2 everything. That's their nature. They would.

3 Q. Was there any alternative payment plan  
4 that the majority of the claimants or their lawyers  
5 agreed to before Weinstein stepped in?

6 A. You mean in any formal sense of agreement?

7 Q. Yes.

8 A. I think not.

9 Q. Trust came up with a bunch of them, didn't  
10 they?

11 A. Oh, yeah.

12 Q. And they all fell on deaf ears,  
13 essentially, correct?

14 A. Well, I wouldn't go that far. Certainly  
15 there were a number of settlement groups that they  
16 were to be paid out over 10 years, heavily loaded on  
17 the rear end. There was all kind of things and they  
18 agreed with that, so you can't say they all disagreed  
19 and that they all fell on deaf ears, because they  
20 didn't.

21 Q. Well, but for, obviously the majority of  
22 them declined to accept, refused to accept the  
23 Trust's alternative payment plans, because otherwise  
24 Weinstein wouldn't have had to step in, correct?

25 A. No. That's not true.

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1 MR. STENGEL: Inconsistent with the prior  
2 testimony.

3 BY MR. BERNICK:

4 Q. Well isn't it true that the Trust came up  
5 with a series of across-the-board payment deferral  
6 plans -- apart from working out individual deals with  
7 individual lawyers, the Trust came up with new ways  
8 of spreading out payments that would apply across the  
9 board, correct?

10 A. We attempted to come up with a variety of  
11 means of paying people over time so that we could  
12 stretch the payment out, stretch the money out. Yes.

13 Q. Okay. And isn't it true that the, that  
14 none of those plans were acceptable to the majority  
15 of the lawyers who were prosecuting the claims?

16 A. I would say that no single plan was  
17 acceptable to everybody. That many of the different  
18 groups of plaintiffs' lawyers accepted one plan or  
19 another.

20 Q. Okay. And that was still not sufficient  
21 to put the Trust in the position where it was able to  
22 keep current with settlements, correct?

23 A. It could not, we did not have the capacity  
24 to pay all the Brooklyn claims, which is exactly the  
25 reason we couldn't settle them, because they wouldn't

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1 take payment over time on our settlement offers.

2 Q. I see.

3 A. That's exactly where we were at when  
4 Weinstein intervened in, that May.

5 Q. Now, Mr. Macchiarola is a current trustee  
6 of the Trust, is he not?

7 A. As far as I know. I don't know for sure.

8 Q. And it was Mr. Macchiarola's observation  
9 and this is in Exhibit 35 now, if you want to page  
10 through Exhibit 35, you see that he wrote a law  
11 review article on the Trust?

12 A. Yes. I saw that before. Uh-huh.

13 Q. And it's published in January 1996?

14 A. Uh-huh.

15 Q. And do you see that if you take a look at  
16 the first page, halfway down you have got the,  
17 basically acknowledgments by the author of the  
18 contribution of different people. And he says in  
19 particular, I also want to thank Karen Van House,  
20 Cardozo class of 1997, and my colleagues Patricia  
21 Houser, David Austern, Karin Croft and Mark Lederer.  
22 Moreover I would like to thank my fellow trustee for  
23 reading the article. And also he gives a couple of  
24 other people and then he also thanks Jack Weinstein.

25 And I'll represent to you further it's

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1 been Mr. Austern's testimony that he was given an  
2 opportunity to comment on drafts of the article and  
3 that's why you saw the letters.

4 A. I mean -- David was, yes. That's right.  
5 Yes.

6 Q. I'm sorry. Oh, I want to get a particular  
7 part of that so I don't have to have you read.

8 Do you see on page 603?

9 A. That's 603 of their numbering?

10 Q. Of the article.

11 A. Okay. Okay.

12 Q. It says, it talks about the FIFO queue.

13 And it says a little bit towards the back end of that  
14 carryover paragraph: The pressure to settle  
15 encouraged other attorneys to bypass the FIFO queue  
16 and file suit. Claimants and their attorneys found  
17 it in the claimants' best interest to litigate at  
18 first chance. Thus from its formation the FIFO queue  
19 was compromised, do you see that?

20 A. Yes.

21 Q. Is that consistent or inconsistent with  
22 your own understanding at the time you were executive  
23 director?

24 A. No, that's right. I would agree. That's  
25 right.

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1 Q. It says, quote, "settlements made under  
2 docket pressure were disproportionately large." Do  
3 you see that?

4 A. I do.

5 Q. Again, is that consistent or inconsistent  
6 with your own understanding at the time?

7 MR. STENGEL: I'm going to object to the  
8 form of the question.

9 THE WITNESS: I'm not so sure that that's  
10 true.

11 BY MR. BERNICK:

12 Q. Well, is there any factual analysis that  
13 you have ever seen that says that it's not true?

14 A. No, but you asked me for my impression,  
15 and my impression is I'm not sure that's true.

16 Q. Okay, is that all that you can say?

17 A. That's right.

18 Q. Okay. You have never seen an analysis  
19 that would either confirm or dispute this claim?

20 A. I have no recollection of one.

21 Q. And it goes on to say, describe the number  
22 of payments that were made and then says, "the Trust  
23 in essence was captured and held hostage by the  
24 plaintiffs' bar," obviously then referring to the  
25 litigation process that unfolded in 1989. Would you

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1 agree or disagree with that statement based upon your  
2 --

3 A. I'm sorry. I don't see where you are  
4 reading that part.

5 MR. STENGEL: This is the first one of  
6 that next paragraph.

7 THE WITNESS: Oh, the next paragraph,  
8 okay. If you think that held hostage by the  
9 plaintiffs' bar means that it was throughout  
10 litigation, then the answer is yes, if that's what  
11 you think that means.

12 BY MR. BERNICK:

13 Q. And the effect of the threat of litigation  
14 was that because the Trust effectively could not  
15 defend itself in all of those lawsuits, once the  
16 litigation threat was mounted by the plaintiffs' bar  
17 in 1989, it effectively put them in a position of  
18 being able to dictate to the Trust what claims would  
19 be settled, correct?

20 A. Because they could break the FIFO queue.

21 Q. They could break the FIFO queue, correct?

22 A. That's right.

23 Q. Okay. It essentially put them in the  
24 position also of exerting huge leverage over the  
25 terms of settlement, correct?

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1 A. They had only had so much leverage. If  
2 you want to call it huge, that's whatever it was.  
3 Yes.

4 Q. Well, it's whatever it was because they  
5 had the ability to actually take the case to trial  
6 and if they took the case to trial, just the trial of  
7 the case itself created a huge cost for the Trust,  
8 correct?

9 A. Yes.

10 Q. In its last year before Weinstein stepped  
11 in the Trust was spending a million dollars a week  
12 just defending cases, right?

13 A. That's, I think, some number like that I  
14 remember. Uh-huh.

15 Q. And the result of, that's the kind of  
16 thing that when the article says the Trust in essence  
17 was captured and held hostage by the plaintiffs' bar,  
18 that's a fair statement, when you think back to how  
19 the claimants and their lawyers used litigation as a  
20 way essentially of forcing the Trust to settle  
21 certain claims and on whatever basis got it  
22 negotiated under those circumstances, correct?

23 A. Well, basically what you are saying is how  
24 it happened. I find the terms held hostage and  
25 captured to be, mean an awful lot of different things

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1 to different people. What you are saying is exactly  
2 what happened. The threat of litigation and the  
3 expense of litigation changed the terms of the  
4 mission, which is what we talked about three hours  
5 ago. Yes.  
6 Q. Okay. And in that respect, and with that  
7 meaning to those terms, you would agree with  
8 Mr. Macchiarola's observation?  
9 A. If that's what that means.  
10 Q. I'm sorry.  
11 A. If that's all that means. Yes.  
12 Q. Okay. And in point of fact, I think that  
13 you would agree, would you not, that somebody who has  
14 got a case that they filed against you on the  
15 courthouse steps, particularly a consolidated case  
16 that involves hundreds of people on the courthouse  
17 steps, they have got a lot of ability to demand a  
18 higher price in order to resolve those claims than  
19 they would if the case were not in litigation at all,  
20 correct?  
21 A. If indeed they are really prepared to go  
22 to trial, the answer to that question is yes.  
23 Q. Okay. Now, the plaintiffs' lawyers who  
24 were prosecuting these cases were some of the very  
25 same plaintiffs' lawyers who had prosecuted cases

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1 successfully both against Manville and against other  
2 asbestos companies, correct?  
3 A. That's right.  
4 Q. And the people who were using the  
5 litigation system in the way that Mr. Macchiarola is  
6 describing in this article are people who are experts  
7 in trying personal injury cases and asbestos cases in  
8 particular, correct?  
9 A. That's right.  
10 Q. In fact, the people who Mr. Macchiarola is  
11 referring to in the article when he makes the  
12 statements about being, the Trust being held hostage,  
13 the plaintiffs' lawyers were some of the most  
14 effective trial lawyers in the country, correct?  
15 A. Some of them were. Some of them not very  
16 effective trial lawyers at all.  
17 Q. Well which ones were the ones that were  
18 most effective?  
19 A. Oh, I think anyone is going to say that a  
20 Scotty Baldwin is a very effective trial lawyer and  
21 that Ron Motley is; and probably Fred Baron. I don't  
22 know that for a fact, but I think so. On the other  
23 hand I have been advised that Levy, who chaired the  
24 committee, doesn't ever go to trial.  
25 Q. Okay. Well, let's just take Ron Motley.

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1 Was Ron Motley ever involved in any consolidated  
2 litigation that came to the courthouse and the Trust  
3 had to settle in 1989 and 1990?  
4 A. Yes.  
5 Q. Which consolidated case?  
6 A. He was involved, he would have been the  
7 trial lawyer in the Humphrey cases in Beaumont,  
8 Texas.  
9 Q. And those were settled as part of the  
10 Cimino settlement?  
11 A. Yes.  
12 Q. What about Scotty Baldwin?  
13 A. Scotty Baldwin had -- no, I don't think  
14 any of the -- well, I can't remember. Unless there  
15 might have been some out of Biloxi, Mississippi. I'm  
16 not sure. Maybe so. But, I mean, it's possible. I  
17 just don't remember.  
18 Q. Mr. Glass, you remember Mel Glass of the  
19 Trust? The claims --  
20 A. Oh, oh, the claims guy. Yes. He was  
21 several layers down. Yes.  
22 Q. It was his observation that the values  
23 that were paid in the Cimino case were inflated by  
24 reason of docket pressure. Would you agree or  
25 disagree with that?

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1 A. I would disagree with that.  
2 Q. Okay. That's a case that was being  
3 prosecuted by Ron Motley, correct?  
4 A. He would have been the person who would  
5 take it to trial. Yes.  
6 Q. It's a consolidated trial, correct?  
7 A. That's right.  
8 Q. It was settled under docket pressure, was  
9 it not?  
10 A. It was settled after every claim had been  
11 looked at and evaluated and finally settled. Yes.  
12 But there was pressure from the court to settle.  
13 There is no question.  
14 Q. There was pressure from the court. And  
15 Mr. Glass when he said that the case was paid, he  
16 said that the case was paid at levels that were  
17 higher than anything that was originally authorized  
18 by the Trust, was that accurate?  
19 A. No. I don't think so.  
20 Q. Glass was not --  
21 A. I think he was wrong.  
22 Q. He was wrong?  
23 A. I think he must be wrong.  
24 Q. Were you personally involved in the  
25 resolution of that claim?

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1 A. In the final three days of negotiations I  
2 was, yes, in Dallas.  
3 Q. Is there any other claim in the entire  
4 history of claims resolution of the Trust where you  
5 can testify based upon personal knowledge of what  
6 happened in connection with the settlement process?  
7 A. The cases in Norfolk before Judge Clark I  
8 was involved in the last few days of negotiations  
9 with those.  
10 Q. Mr. Glass was not knowledgeable about how  
11 the Cimino case was settled?  
12 A. I do not know if he was or not. But if he  
13 said that, I think he was wrong.  
14 Q. Well, how do you know?  
15 A. Because I relied on Smith and Feeney, who  
16 were his superiors, and they were much more  
17 knowledgeable than he was.  
18 Q. How do you know they were more  
19 knowledgeable?  
20 A. That's their job. They were.  
21 Q. Wasn't it true that Mel Glass was the guy  
22 who worked up the numbers for the Cimino settlement?  
23 A. I don't know. I don't know that. I don't  
24 know that.  
25 Q. Do you know who worked up the numbers for

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1 the Cimino settlement?  
2 A. They came to me from Smith.  
3 Q. Do you know who worked up the numbers?  
4 A. No, I don't.  
5 Q. Do you know how those numbers compared to  
6 other numbers that the Trust was paying to resolve  
7 other claims?  
8 A. Again, considering the pressures of the  
9 trial court in Judge Parker's court, I don't think  
10 those were extraordinary amounts of money paid for  
11 those claims. If that's what you, isn't that what  
12 you asked me? Or did I misunderstand?  
13 Q. Well, I had thought you said, let me just  
14 put the question directly, is or it is it not the  
15 case that the values that were paid in Cimino were  
16 higher than values that were being paid by the Trust  
17 on other cases that were not on the courthouse steps?  
18 A. I'm sure that's probably true. Yes. I'm  
19 sorry. I misunderstood your question apparently.  
20 Q. And isn't that what Mr. Macchiarola is  
21 getting about when he said that cases paid or claims  
22 paid when they were in litigation and on the  
23 courthouse steps were paid more than claims that were  
24 being settled in the ordinary course by the Trust?  
25 MR. STENGEL: Can I have an objection of

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1 that question divorced of the preface of isn't that  
2 what Dean Macchiarola is getting at? I don't think  
3 there is any foundation for her speaking as to what's  
4 in his mind.  
5 BY MR. BERNICK:  
6 Q. Well, but isn't that a broad, the broader  
7 proposition is true, is it not, the cases that were  
8 settled where they were in litigation, were cases  
9 that the Trust had to pay more on, than cases that  
10 were settled in the ordinary course, correct?  
11 A. It's been my experience of how the tort  
12 system works in this country. That's right.  
13 Q. Okay. And to the extent that the  
14 plaintiffs took advantage of their ability to get  
15 access to the litigation system, to the tort system,  
16 and push cases to trial, they were able to force the  
17 Trust to pay more money than the Trust would have  
18 paid if the cases were simply in the settlement  
19 process, correct?  
20 A. That's probably true.  
21 Q. Okay. Now, do you recall the position  
22 that was taken by the Trust -- strike that. You have  
23 said that there were other asbestos companies that  
24 also brought the Trust into litigation. Do you  
25 recall that?

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1 A. Oh yes.  
2 Q. And the way that they brought the Trust  
3 into litigation was to file against the Trust what is  
4 called a third party claim?  
5 A. That's right.  
6 Q. And a third party claim is simply a  
7 lawyer's way of talking about the fact that if you  
8 are sued as a defendant, and you believe that  
9 somebody else is responsible for the plaintiffs'  
10 claim in whole or in part, you as a defendant can go  
11 file your own claim against that third party,  
12 correct?  
13 A. Yes.  
14 Q. And in the case of the other asbestos  
15 companies, they were facing lawsuits by asbestos  
16 claimants, correct?  
17 A. That's right.  
18 Q. And what they did in 1989 when they were  
19 permitted to under the plan is they filed third party  
20 claims against Manville, true?  
21 A. That's right.  
22 Q. And Manville took the position, the  
23 Manville Trust took the position in 1989 and  
24 thereafter that where an asbestos company, where a  
25 defendant had settled with the plaintiff, prior to

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1 judgment, that defendant that settled, that asbestos  
 2 company couldn't turn around and seek a third party  
 3 claim against the Manville Trust, correct?  
 4 A. I believe we did. Yes.  
 5 Q. And on the basis -- that was an analysis  
 6 that Mr. Austern did, right?  
 7 A. Yes. I would guess that's where it came  
 8 from. Somebody in the shop. Yes.  
 9 Q. On the basis, in other words if you are a  
 10 defendant and you settle before judgment, you can't  
 11 turn around and sue somebody else, right?  
 12 A. I think that's the position he took.  
 13 Q. And that's the position that the Trust  
 14 took with the result that very, very few claims ended  
 15 up being properly presented to the Manville Trust by  
 16 the asbestos companies because for the most part,  
 17 they settled before judgment, correct?  
 18 A. Most of them were settled. I'm sure. Few  
 19 of those cases were tried in those years. Yeah.  
 20 Q. I have to ask you a little bit about the  
 21 negotiations for a new plan and new procedure after  
 22 Weinstein, Judge Weinstein stepped in. It's true, is  
 23 it not, that after Judge Weinstein stepped in there  
 24 was an effort to put together a class action  
 25 settlement which would change the way the claims were

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1 correct?  
 2 A. That was the agreement that was reached in  
 3 I guess what? Late summer of '91? Something like  
 4 that.  
 5 Q. And in doing so, the Trust ended up  
 6 agreeing with the plaintiffs to a different way of  
 7 settling claims, correct?  
 8 A. I think that's right.  
 9 Q. In other words, the Trust wants to get out  
 10 of the tort system. The claimants' lawyers know that  
 11 the tort system can advantage them.  
 12 A. That's right.  
 13 Q. Although not all of them at once. So the  
 14 claimants' lawyers say well, if we are going to go  
 15 out of the tort system, there are things that we  
 16 want, too, fair statement?  
 17 A. That's fair.  
 18 Q. And one of the things that the claimants  
 19 wanted in the class action settlement discussions as  
 20 of the time that you were there is that they wanted a  
 21 system that would basically pay their claims out  
 22 according to more of a formula, a formula or matrix?  
 23 A. As a matrix. Yes.  
 24 Q. A matrix. And under the matrix, certain  
 25 claims would have certain values that were

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1 paid?  
 2 A. That's right.  
 3 Q. And is it also true that in connection  
 4 with that effort, one of the principal goals of the  
 5 Trust was to get the Trust out of the tort system?  
 6 A. That's right.  
 7 Q. That basically the Trust concluded that so  
 8 long as it was threatened with being taken into the  
 9 tort system, it couldn't conduct its settlement  
 10 business, fair?  
 11 A. That it would not be able to survive  
 12 litigation, no matter what else we did. That's  
 13 right.  
 14 Q. Okay. Litigation, essentially by 1989, if  
 15 not earlier, the Trust understood that litigation was  
 16 the enemy of the Trust's survival, fair statement?  
 17 MR. STENGEL: Objection to the form.  
 18 THE WITNESS: It could not fulfill its  
 19 mission with litigation as the driving force, to be  
 20 court-docket-driven. That's right.  
 21 BY MR. BERNICK:  
 22 Q. The Trust succeeded in the negotiations as  
 23 they stood as of the time that you left. The Trust  
 24 succeeded in obtaining an agreement that would  
 25 essentially take the Trust out of the tort system,

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1 predetermined and preset, correct?  
 2 A. That's how a matrix operates. Yes.  
 3 Q. And the matrix also spelled out exactly  
 4 what the claim had to say and provide in order to  
 5 qualify for different levels of the matrix, correct?  
 6 A. I think that's true, but it's, it's a  
 7 misstatement that that's what the plaintiffs sought  
 8 for and sought and wanted. The plaintiffs accepted  
 9 the matrix. They didn't go out and set out to get  
 10 one.  
 11 Q. I see. Well, they certainly sought out to  
 12 get a situation where the burden of filing claims  
 13 would be reduced from --  
 14 A. Yes.  
 15 Q. -- what it was previously, correct?  
 16 A. Yes, that's right. They did.  
 17 Q. And one of the things they got in the  
 18 negotiations was that in fact, in order to make a  
 19 claim in the future, a claimant did not have to  
 20 provide as much individual detailed information as  
 21 had been true previously, correct?  
 22 A. I think that's true. Yes.  
 23 Q. Okay. Now, that was again a decision that  
 24 the Trust made, was it not, that is to agree to that  
 25 type of procedure?

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1 A. I think the Trust agreed to that type of  
2 procedure in the sense of negotiating, not just with  
3 the claimants' lawyer, but with the futures attorney  
4 at the time, with all the players. Yes.  
5 Q. But the decision that the Trust made in  
6 connection with the class action settlement to allow  
7 the claims to be filed with less individualized  
8 detail, that was a decision that was up to the Trust  
9 to make during the negotiation process, correct?  
10 MR. STENGEL: Objection to the form of the  
11 question.  
12 THE WITNESS: I think that's right.  
13 BY MR. BERNICK:  
14 Q. Okay. Nobody forced the Trust? No court  
15 order forced the Trust to go down that road, did it?  
16 MR. STENGEL: Objection to the form of the  
17 question.  
18 THE WITNESS: There was not a court order  
19 to go down the road.  
20 BY MR. BERNICK:  
21 Q. That was a judgment that the Trust made in  
22 order to negotiate a deal that they thought was  
23 favorable to the Trust, correct?  
24 A. It was a part of the negotiated results.  
25 Yes.

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1 Q. Okay. Now, when Judge Weinstein became  
2 involved, there was first the stay in, I think you  
3 said May of 1990, correct?  
4 A. I think so.  
5 Q. And from May of 1990 until the latter part  
6 of 1991, various proceedings took place before Judge  
7 Weinstein, correct?  
8 A. Yes.  
9 Q. And those proceedings included a special  
10 masters proceeding before Judge Frankel?  
11 A. Frankel.  
12 Q. Judge Frankel was appointed by Judge  
13 Weinstein as a special master, correct?  
14 A. That's right.  
15 Q. And he was asked by Judge Weinstein to  
16 look into the solvency of the Trust, correct?  
17 A. That's right.  
18 Q. And Judge Frankel in turn took testimony  
19 on that subject, correct?  
20 A. He did.  
21 Q. There was something of an investigation  
22 conducted through Judge Frankel into the issue of  
23 solvency, correct?  
24 A. I guess that's how -- yes.  
25 Q. There were also fairness hearings that

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1 were conducted concerning the proposed class action  
2 settlement, correct?  
3 A. I believe that's right.  
4 Q. And those fairness hearings took place  
5 before Judge Weinstein, true?  
6 A. I presume so. I did not attend those  
7 hearings.  
8 Q. Okay. But you understood that they were  
9 taking place --  
10 A. Yes. That's right.  
11 Q. -- did you not? And during the course of  
12 the hearings, isn't it true that Judge Weinstein  
13 inquired into the history of how the Trust had  
14 operated because it was part of the backdrop for the  
15 proposal to change things, correct?  
16 A. I think that's right.  
17 Q. Okay. And testimony was taken concerning  
18 the claims resolution procedures, concerning how much  
19 money had been spent, and the like, correct?  
20 A. I think that's right.  
21 Q. And after all of what was done was done  
22 before Judge Weinstein, he then issued an opinion  
23 about fairness in the back end of 1991, correct?  
24 A. I presume that's true. I don't really  
25 remember his opinion. But I guess that's right.

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1 Q. And isn't it true that during no part of  
2 that process, to your knowledge, during no part of  
3 that process did anyone ever bring to Judge  
4 Weinstein's attention the fact of these  
5 off-the-record meetings with Judge Lifland, correct?  
6 MR. STENGEL: Objection to form.  
7 THE WITNESS: I do not know if they did or  
8 not. I mean, I did not.  
9 BY MR. BERNICK:  
10 Q. Okay. Do you know of anyone else who  
11 might have?  
12 A. No, I do not know they did.  
13 Q. Do you know of anyone who described to  
14 Judge Weinstein the Trust's concerns with  
15 consummating the plan in 1988?  
16 A. No, I do not know.  
17 Q. Did anyone bring to Judge Weinstein's  
18 attention the Trust's, the fact that the Trust was  
19 concerned about the inequities surrounding the  
20 payment to the pre-c claims on the terms that they  
21 were paid?  
22 MR. STENGEL: Objection to the form of the  
23 question.  
24 THE WITNESS: I do not know.  
25 BY MR. BERNICK:

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1 Q. Do you know whether anyone brought to  
2 Judge Weinstein's attention any of the  
3 decision-making process within the Trust concerning  
4 whether the plan should be consummated? And whether  
5 the plan after consummation should be stayed because  
6 the Trust was running out of money?

7 A. I --

8 MR. STENGEL: Object to the form of the  
9 question.

10 THE WITNESS: I have no knowledge of that.  
11 I don't know.

12 BY MR. BERNICK:

13 Q. Well just, there has been an objection to  
14 form here, so I'll ask you this. We talked this  
15 morning at some length about the decision-making of  
16 the Trust leading up to whether the plan should be  
17 consummated, do you recall that?

18 A. Uh-huh.

19 Q. Respond orally for the court reporter.

20 A. Yes, I do.

21 Q. Do you recall whether any of that was ever  
22 brought to Judge Weinstein's attention?

23 A. I personally did not and I have no  
24 knowledge that anyone else did.

25 Q. Okay. Same question with regard to the

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1 MR. STENGEL: Objection to the form of the  
2 question.

3 THE WITNESS: I have no recollection of  
4 that.

5 BY MR. BERNICK:

6 Q. Judge Weinstein ultimately issued his  
7 opinion, correct?

8 A. Yes. I think so.

9 Q. That M 12 deal.

10 A. (Witness looks among documents.)

11 Q. Did you read his opinion?

12 A. When was it issued?

13 Q. It was issued in I believe it was June of  
14 1991.

15 A. Then I would have.

16 Q. Do you recall that --

17 MR. BERNICK: (Aside) It's not marked or  
18 anything?

19 BY MR. BERNICK:

20 Q. Do you recall that in the opinion, Judge  
21 Weinstein makes a series of comments about the  
22 operations of the Trust?

23 A. I don't recollect that at this point. I  
24 have not seen nor thought about that opinion in years  
25 so I would have to go back and read it.

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1 period after consummation. After consummation, the  
2 Trust remained concerned that it was running out of  
3 money and the claims were not being paid on the same  
4 basis, correct?

5 A. Yes.

6 Q. Do you know of anyone who ever brought  
7 that to the attention of Judge Weinstein?

8 MR. STENGEL: Object to the form.

9 THE WITNESS: I personally did not and I  
10 don't know of anyone else who did.

11 BY MR. BERNICK:

12 Q. Did it ever occur to you, Ms. Smith, now  
13 even Judge Weinstein is involved and he is going back  
14 over the history of this Trust, did it ever occur to  
15 you yourself to say, we should tell Judge Weinstein  
16 the full story of what happened within the Trust  
17 before consummation? Did it ever occur to you?

18 A. I have no recollection of that.

19 Q. Did it ever occur to you after  
20 consummation to say to the Trust or others at the  
21 Trust, gee, we ought to bring to Judge Weinstein's  
22 attention all of the problems that we faced after the  
23 consummation, all the problems we faced because  
24 different claimants were being paid on a different  
25 basis?

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1 Q. Do you recall that the opinion was  
2 critical --

3 MR. BERNICK: (Aside) Yeah, that's it.  
4 It should be. No. Everything is missing.

5 BY MR. BERNICK:

6 Q. Do you recall that he was critical of the  
7 Trust's operations prior to the time that he entered  
8 into the process?

9 A. I personally at this moment recall nothing  
10 about that opinion.

11 Q. I'm going to read to you a statement out  
12 of the opinion.

13 A. Okay.

14 Q. He says at page 180, "To the extent that  
15 cases were settled due through Claims Resolution  
16 Facility, plaintiffs' attorneys exercised  
17 considerable and effective influence over the Trust's  
18 settlement and payout practice." Do you agree or  
19 disagree with that statement?

20 A. It's true.

21 Q. Do you recall that -- maybe I've got  
22 another thing here that I can use -- that he was  
23 critical of the fact that the Trust had available to  
24 it computerized data-processing capabilities, but  
25 when it came to settling the pre-c claims prior to



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1 November 1988, it relied upon handwritten notations  
2 and memos?

3 MR. STENGEL: Objection to form.

4 THE WITNESS: I don't remember that. I  
5 don't remember that being the case.

6 BY MR. BERNICK:

7 Q. Do you recall his statement at page 181  
8 that many of the pre-petition claimants had received  
9 roughly full compensation for their injuries from the  
10 co-defendants during bankruptcy, nevertheless, their  
11 attorneys were able to obtain large additional  
12 amounts from the Trust consuming all of its liquid  
13 resources? Do you recall his stating that at page  
14 182?

15 A. That was his conclusion. I don't think he  
16 is right, but that was his conclusion.

17 Q. Did the -- strike that. Did you ever see  
18 any written analysis demonstrating that he was wrong?

19 A. I certainly saw the stuff that came from  
20 the ACF about the kind of, because many of our  
21 claims, of our pre-c claims had already been settled  
22 by the ACF, and I certainly saw their documents of  
23 what they had paid as compared to what our people  
24 were agreeing to pay, and so I think he was wrong  
25 because those are many of the same claims.

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1 Q. Yeah. But do you ever see any analysis  
2 showing that in fact he was wrong?

3 MR. STENGEL: You mean after the fact?

4 THE WITNESS: You mean after the fact of  
5 this? No.

6 BY MR. BERNICK:

7 Q. After the fact, somebody went back through  
8 the record and said look, he is wrong?

9 A. No. No. Not that I know about. I don't  
10 remember -- if that was done, I don't remember it.

11 Q. He goes on to say at page 183 that  
12 representatives of the Trust made clear to select  
13 plaintiffs' counsel almost as soon as this Trust  
14 began operations that Trust assets were insufficient.  
15 As a result there was an urgency by claimants to  
16 assemble huge numbers of claims quickly and push them  
17 out to early settlement or judgment before the money  
18 ran out. The result was a frenzied offense by the  
19 plaintiffs' bar to dispose of claims by the hundreds  
20 of thousands at one time and collect these before the  
21 Trust went broke. Do you remember his making that  
22 statement?

23 A. I do not remember the statement. No.

24 Q. Is that an accurate statement?

25 A. It's very close to the truth.

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1 Q. Okay. He goes on to say at page 183: To  
2 avoid the expense of litigation and the risk of  
3 judgment, the Trust sought to settle. Settlements  
4 obtained on the steps of the courthouse invariably  
5 cost more. Do you remember his making that  
6 statement?

7 A. I don't remember it, but it's a true  
8 statement. Whether it's with this case or with  
9 others, that they invariably cost more. Yes.

10 Q. Judge Weinstein made all these different  
11 findings in his opinion, correct?

12 A. I presume that's where you are reading  
13 from, yes.

14 Q. Okay. Do you recall that Judge Weinstein  
15 also took steps to change the personnel who were  
16 running the Trust?

17 A. I don't understand what you mean.

18 Q. Do you recall, for example, that he asked  
19 that all of the Trustees resign?

20 A. He said that he would like to have their  
21 resignations in my presence because he would like to  
22 replace them with his own Trustees. Yes. He did say  
23 that. I do.

24 Q. And in point of fact, the only trustee  
25 from the earlier days who continued was Mr. Markey,

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1 correct?

2 A. Chris. Markey. That's right.

3 Q. Do you remember why it is that an  
4 exception was made for him?

5 A. He just refused to leave.

6 Q. I see. Isn't it true that there was  
7 concern that Mr. Markey needed the money?

8 A. Yes, there was.

9 Q. Judge Weinstein also asked for your  
10 resignation, correct?

11 A. No. He did not. In fact, I was urged to  
12 stay.

13 Q. You were urged to stay?

14 A. That's right.

15 Q. Did you ever become apprised of  
16 discussions that took place between Judge Weinstein  
17 and Mr. Tyler concerning your compensation package,  
18 the severance package?

19 A. Oh yes. Ace Tyler? Yes.

20 Q. Yes. And isn't it true that when that  
21 process became a protracted one, that is, determining  
22 what the severance package would be, that Judge  
23 Weinstein threatened to eliminate the severance  
24 package in order to get this thing done?

25 A. I don't know how that might have come

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1 brought claims against Manville for asbestos-related  
2 injury?

3 A. You are talking about.

4 MR. STENGEL: Objection. Lack of  
5 foundation.

6 THE WITNESS: You are talking about the  
7 company?

8 BY MR. BERNICK:

9 Q. Yes.

10 A. I have no knowledge of that. I don't  
11 know.

12 Q. When you came on board at the Trust, did  
13 you learn that this was a defense, that is, the  
14 defense that says that a smoker who is an asbestos  
15 claimant is responsible for his smoking and therefore  
16 that Manville's liability is less, is that a defense  
17 that you came to learn about when you joined the  
18 Trust?

19 A. I don't know that that, that that is  
20 exactly the way it would have been phrased at the  
21 time. That they were responsible for it, therefore.  
22 Certainly it was in one of the negotiating tools for  
23 lowering the value of a claim, that they were  
24 smokers.

25 Q. Okay. What you are saying is when the

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1 Q. Okay. Did you ever hear anyone at the  
2 Trust discuss or say words to the effect that gee,  
3 the smoking discounts that we are able to obtain are  
4 not enough or are inadequate for any reason?

5 MR. STENGEL: Objection to the form of the  
6 question.

7 THE WITNESS: I have no recollection of  
8 that. At all.

9 BY MR. BERNICK:

10 Q. Did you ever say that to anybody?

11 A. Not that I can remember. I just don't --  
12 I don't think so.

13 Q. Okay. If the Trust were following regular  
14 procedures, according, as you understood those  
15 procedures, in every case involving a smoker, the  
16 Trust should have sought to obtain a discount,  
17 correct?

18 MR. STENGEL: Objection. Lack of  
19 foundation.

20 BY MR. BERNICK:

21 Q. If you know?

22 A. I think the answer to that is yes.

23 Q. Now, when the Trust was facing litigation,  
24 as lawsuits were brought against the Trust after it  
25 opens its doors for operations, and the litigant or

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1 Trust sat down to litigate settlements with claimants  
2 who had smoked, the fact that they smoked was used as  
3 an argument by the Trust to settle the claim on a  
4 lower, at a lower level, correct?

5 A. Yes.

6 Q. Okay. And was that true throughout the  
7 period of time that you were at the Trust?

8 A. Yes.

9 Q. Okay. Did you view it as one of the  
10 Trust's obligations in resolving and paying for  
11 Manville liability only, to take a look at any case  
12 brought by a smoker and where appropriate, to seek a  
13 discount for smoking?

14 A. Yes.

15 Q. Okay. Was that part of the regular  
16 procedures that were followed by the Trust?

17 A. Yes. And had been at ACF and any of the  
18 other settlements, so to speak.

19 Q. Did you ever take the position to anybody  
20 that the discounts that had been, that had been  
21 obtained by the Trust for smoking were insufficient?

22 MR. STENGEL: Objection to the form of the  
23 question.

24 THE WITNESS: I have no knowledge of that.

25 BY MR. BERNICK:

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1 the claimant was a smoker, under the Trust documents,  
2 isn't it a fact that the Trust could raise whatever  
3 defense it felt was appropriate in defending against  
4 that claim?

5 A. Yes, they could have.

6 Q. In other words, as a general proposition,  
7 if a claimant chose not to settle, but to litigate,  
8 at that point the Trust could use whatever arguments  
9 it felt were appropriate in litigating the claim,  
10 correct?

11 A. As I recollect, the document says they are  
12 to apply the state law, so I'm sure that, you know,  
13 that you can apply any defense that's legal under the  
14 law of that state and that would be one of them.

15 Q. And did you realize and did you know when  
16 you were at the Trust that one of the defenses that  
17 was available to the Trust, and that the Trust used,  
18 in the case of smokers who litigated was that  
19 cigarettes were responsible for some or all of the  
20 claim that was being made? Did you know that that --

21 A. Do I know as a fact that that happened?

22 No. I do not know as a fact that that happened.

23 Q. Was there discussion within the Trust that  
24 that was a defense that was available to the Trust?

25 A. And that that should be used to lower the

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1 Trust knew or didn't know about cigarettes or smoking  
 2 and health during the period of time that you were  
 3 there; correct?  
 4 A. No, I am not.  
 5 Q. Am I correct in my statement?  
 6 A. You are absolutely right.  
 7 Q. Okay. Have you learned that in more  
 8 recent years a significant number of tobacco company  
 9 documents have been produced in litigation and made  
 10 available publicly?  
 11 A. Yes, sir. I read the newspaper.  
 12 Q. You read the newspapers. Beyond reading  
 13 the newspapers, have you ever examined any of the,  
 14 any documents at any time?  
 15 A. I have never --  
 16 Q. -- written or produced by any tobacco  
 17 company?  
 18 A. The only documents I have ever seen was  
 19 when the Congressman from Virginia released all those  
 20 documents, I think that's what it was, and they were  
 21 on the computer screen and I looked at them and  
 22 happily did not read them, but I saw them.  
 23 Q. Okay.  
 24 A. That's the only ones I can think of.  
 25 Q. Okay. But as you sit here today, can you

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1 testify to the contents of any tobacco industry  
 2 document of any kind, really?  
 3 A. No, sir. I cannot.  
 4 Q. You weren't consulted in connection with  
 5 the filing of this lawsuit?  
 6 A. No, sir. I was not.  
 7 Q. You weren't consulted in connection with  
 8 the continued prosecution of this lawsuit?  
 9 A. No, sir. I have not been.  
 10 Q. You have never sat down to determine what,  
 11 if anything, the Trust learned that was new about  
 12 smoking and health or about tobacco or about asbestos  
 13 that led to the filing of this lawsuit?  
 14 A. I know nothing about this lawsuit.  
 15 Q. Okay. And therefore you couldn't speak to  
 16 any of those matters, that is, what the Trust knew  
 17 now versus what the Trust knew back then or whether  
 18 they learned anything new, that's not something you  
 19 have personal knowledge or acquaintance with,  
 20 correct?  
 21 A. None.  
 22 Q. Am I correct?  
 23 A. That's absolutely right.  
 24 Q. I take it then that you were also not in a  
 25 position to talk with us about whether the Trust

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1 would have done something differently back during the  
 2 period of time that you were there if they had known  
 3 something that they know today about smoking and  
 4 health, that's again something you cannot speak to,  
 5 correct?  
 6 A. I cannot speak to that.  
 7 Q. Okay. Let's talk about just a few more  
 8 questions. Did you have any contacts with the  
 9 tobacco industry back during the period of time that  
 10 you were executive director of the Trust?  
 11 A. No. I don't think so.  
 12 MR. STENGEL: Other than purchasing  
 13 cigarettes for her own consumption.  
 14 THE WITNESS: Other than a carton at a  
 15 time, yeah.  
 16 BY MR. BERNICK:  
 17 Q. What brand did you smoke?  
 18 A. I think I smoked Benson & Hedges during  
 19 those years.  
 20 Q. Are you aware of any contacts that took  
 21 place between anybody representing or affiliated with  
 22 the tobacco industry on the one hand and anybody else  
 23 at the Trust on the other?  
 24 A. Not that I know about.  
 25 Q. Are you aware of any representations of

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1 any kind that were made to the Trust by the tobacco  
 2 industry, directly or indirectly?  
 3 A. No, I'm not.  
 4 Q. Are you aware of any activities of the  
 5 tobacco industry that affected Trust operations back  
 6 during the period of time that you were an executive  
 7 director of the Trust?  
 8 A. No, I don't know of any impact they had on  
 9 us at the time. That I have any knowledge of.  
 10 Q. Okay. I want to take you back to the time  
 11 immediately after consummation of the plan but before  
 12 the Trust paid out any money. Are you back there  
 13 now?  
 14 A. Okay.  
 15 Q. We are kind of at the very end of '88 or  
 16 the very beginning of '89. At that time is it fair  
 17 to say that the Trust was facing the threat of an  
 18 onslaught of litigation?  
 19 A. Well, certainly we knew that was one of  
 20 the clear possibilities. We started receiving claims  
 21 in, I guess it would be December or January,  
 22 somewhere in that range of time. The plan  
 23 specifically said how many days from the filing of  
 24 the claim they could bring a lawsuit, and what we  
 25 became aware of pretty quickly, that if we had a

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1 staff of thousands, we couldn't process claims fast  
2 enough to meet that deadline because it was at, it  
3 was a poorly created piece of work, frankly.

4 And then there wasn't going to be very  
5 many more days until the co-defendants could start  
6 pulling us in and that was going to start happening  
7 so we knew that litigation was potentially out there.  
8 Yes.

9 Q. It was just a question of time before it  
10 was going to hit the Trust?

11 A. Yes.

12 Q. And would it be fair to say that that was,  
13 the number one threat to the Trust in 1989 was being  
14 brought into the litigation system?

15 MR. STENGEL: Objection to the form of the  
16 question. We have already sort of been over this,  
17 haven't we?

18 MR. BERNICK: I don't know if I asked  
19 precisely that question. We are getting near to the  
20 end. Do you have an objection to the form of the  
21 question? I don't know how in the world -- is that  
22 at all unclear to you that the number one threat to  
23 the Trust in early 1989 was being dragged into the  
24 court system by literally thousands of claimants?  
25 That was the number one threat, fair?

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1 THE WITNESS: That was the number one  
2 threat.

3 BY MR. BERNICK:

4 Q. Okay. And the principal priority of the  
5 Trust at the time was to try to convince people  
6 essentially not to do that, right?

7 A. Slow the beast down. Yes.

8 Q. And did anyone ever propose to you or  
9 anyone else at the Trust that the Trust should hold  
10 off on settlements, hold off settling the cases so  
11 that the Trust could go file its own lawsuits, third  
12 party or other kind of lawsuits in order to spread  
13 the cost or risk to somebody else? Did anyone ever  
14 propose that to you?

15 A. Certainly there was the proposal for the  
16 first to slow things down, to just slow the  
17 settlements right down, it's not so much how much you  
18 pay, it's how fast you have to pay it, kind of an  
19 argument. So that we could bring third party or  
20 implead other defendants, I don't have any  
21 recollection of that.

22 Q. If somebody had proposed holding off on  
23 settlements so that the Trust could pursue third  
24 party claims, based upon your knowledge of how the  
25 plaintiffs' bar was operating at the time, would they

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1 have agreed to that type of procedure?

2 MR. STENGEL: Objection to the form of the  
3 question.

4 THE WITNESS: I think you would have to  
5 know an awful lot more than what you just gave me to  
6 answer that question.

7 BY MR. BERNICK:

8 Q. A matter of speculation on your part? To  
9 comment on that now?

10 A. Well, you know, the likelihood of  
11 increasing the money, the opportunities of success.  
12 I mean, all those kind of things are factors in  
13 whether or not the plaintiffs' bar is going to  
14 respond favorably or tell you, you know, forget it.  
15 So --

16 Q. You can't speak to that?

17 A. Yeah. I can't speak to that.

18 Q. Do you recall that shortly after  
19 consummation that there was -- well, strike that and  
20 start over again. Basically the plan documents  
21 themselves called out that each claim was going to  
22 have to be made through a proof of claim form, correct?

23 A. Yes.

24 Q. So everybody who is a lawyer representing  
25 anybody who is a claimant knew that if they wanted to

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1 get their claims processed, they were going to have  
2 to file a proof of claim, right?

3 A. That's what the plan required. Yes.

4 Q. And that would have been out there known  
5 to everybody ever since the plan had been proposed,  
6 correct?

7 A. I believe so.

8 Q. So any lawyer who wanted to take even  
9 minimal steps to make sure that they were prepared to  
10 file their claim had plenty of time in order to make  
11 sure that their clients had proof of claim forms  
12 completed? Did I say that right or did I say  
13 claimants versus lawyer? Forget that.

14 A. Yes.

15 Q. Let me re-ask the question. Any claimant  
16 or any lawyer who wanted to get their claim filed and  
17 processed in a timely way knew long in advance of  
18 consummation that they had to get their ducks in a  
19 row and put together a claim form, correct?

20 A. I think that's right.

21 Q. Okay. So there really wasn't any excuse  
22 for a, even a modestly diligent lawyer not to have  
23 their claim forms ready, correct?

24 A. Well, perhaps that's how you define  
25 diligent, but there certainly were a lot of excuses,

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1 but you are right. I think if someone set their mind  
2 about it, they'd have them done, yeah.  
3 Q. Okay.  
4 A. They could do it.  
5 Q. In point of fact, isn't it true that one  
6 of the defenses that was available to the Trust for  
7 claims was the statute of limitations defense?  
8 A. The statute of limitations defense in what  
9 regard?  
10 Q. If somebody wanted to litigate against the  
11 Trust, they had to file, they were subject to a  
12 statute of limitations defense? You know what the  
13 statute of limitations is?  
14 A. Well of course I do.  
15 Q. Right.  
16 A. You don't have to insult me. I'm just --  
17 I'm trying to figure in what context you are using  
18 that. Statute of limitations when this were exposed,  
19 when they filed a claim? I mean, I don't know what  
20 you mean.  
21 Q. Didn't the plan of reorganization call for  
22 claimants to file their claims, their proof of claim  
23 forms within 30 days of the effective date of the plan?  
24 A. I'd have to look at it. I don't remember.  
25 Q. Do you recall that there was a provision

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1 that dealt with statute of limitations, that if the  
2 claims were not filed within 30 days of the effective  
3 date of the plan the Trust could raise a statute of  
4 limitations defense?  
5 A. I do not remember that. I'm sorry. I  
6 mean I would have to look. I just don't remember.  
7 Q. Why don't you give me half a minute. I'll  
8 go off the record for a minute.  
9 (Recess.)  
10 THE VIDEOGRAPHER: Off record and the time  
11 on screen is 14:46:38.  
12 (Recess.)  
13 THE VIDEOGRAPHER: On record and the time  
14 on screen is 14:49:28.  
15 BY MR. BERNICK:  
16 Q. Ms. Smith, a couple of other things. You  
17 made reference to the fact that when there was  
18 discussion in 1988 of not going ahead with  
19 consummation of the plan that you got a pretty  
20 vigorous reaction out of the people who represented  
21 the Manville Corporation, correct?  
22 A. Yes.  
23 Q. And would it be fair to say that the  
24 Manville Corporation was very anxious that the plan  
25 be consummated on time?

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1 A. I would say they were extremely anxious.  
2 Q. And they were worried that if the plan  
3 were not consummated on time -- it -- under the plan  
4 -- strike that. Under the plan, the Trust took  
5 responsibility for resolving all of the former  
6 Manville asbestos health claim liabilities, correct?  
7 A. Yes.  
8 Q. And Manville basically was able to operate  
9 as a company free and clear of those liabilities, correct?  
10 A. That's right.  
11 Q. And in exchange, they had to pay certain  
12 moneys to the Trust over time and they had to give  
13 the Trust certain other assets?  
14 A. That's right.  
15 Q. And a certain portion of their stock  
16 belonged to the Trust, correct?  
17 A. That's right.  
18 Q. Okay. But having agreed to commit those  
19 assets, essentially Manville was then able to go  
20 forward and conduct its business without the threat  
21 of litigation, correct?  
22 A. That's exactly right.  
23 Q. And that was perceived, as you understood  
24 it through talking with the Manville folks, that was  
25 something that you knew was a very important feature

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1 of the plan for Manville?  
2 A. Extremely so.  
3 Q. Okay. And they themselves were worried  
4 that if the plan were not consummated in time, that  
5 could very negatively effect their going forward  
6 stock value, correct?  
7 A. There were many, many, many meetings with  
8 their investment bankers and our investment bankers  
9 and explanations of why indeed we needed to have  
10 consummation when we did. We had to hold the asset  
11 together, we had to keep the value of the stock up,  
12 we had to keep the company running because otherwise  
13 there would be no money for the beneficiaries, it  
14 didn't make any difference what we did.  
15 Q. And the reason that Manville was so  
16 exercised was that they didn't want to see the value  
17 of their stock negatively affected and they didn't  
18 want to be threatened with any continuing liability  
19 in the event that there wasn't money for these people  
20 in the Trust, correct?  
21 A. I think that's -- that's sound. Yes.  
22 Q. Now, the question of these contacts with  
23 Judge Lifland, as an attorney, did you, did you feel  
24 that it was close to the line of, you know, an  
25 improper ex parte contact to be having so many of

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1 these conversations with Judge Lifland without the  
2 benefit of a record or formal notice to any party?  
3 Did you feel that was close to the line?  
4 A. It may have been close to the line, but I  
5 reported to Judge Lifland. I didn't, I had not been  
6 in the litigation of the bankruptcy. I was in the  
7 Trust that reported to him and he was, certainly  
8 expected to know what was going on on a regular basis  
9 and to have those kind of conversations and so we  
10 did. And it may have been close to the line. I  
11 don't know.  
12 Q. Well, did you feel at the time it was  
13 close to the line?  
14 A. I didn't feel intimidated about doing it  
15 to the point I didn't do it.  
16 Q. Did you ever talk about that with him?  
17 That is, whether these meetings were in fact proper?  
18 A. I don't think so.  
19 Q. When no formal notice was given to anybody  
20 else?  
21 A. No. There wouldn't have been.  
22 Q. No formal notice was given to any  
23 claimant?  
24 A. And no formal notice was given when  
25 Lifland met with Silverman or when Lifland met with

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1 Levy either.  
2 Q. But that was never discussed with him?  
3 A. No.  
4 MR. BERNICK: Okay. I think that that's  
5 all I have.  
6 MR. STENGEL: You don't need to consult  
7 again, do you?  
8 MR. BERNICK: No.  
9 MR. STENGEL: Thank you.  
10 MR. BERNICK: Thank you.  
11 THE VIDEOGRAPHER: This concludes the  
12 deposition and the number of tapes is three and the  
13 time on the screen is 14:53:58.  
14 (Whereupon, at 14:53:58 p.m., the taking  
15 of the instant deposition ceased.)  
16  
17  
18 \_\_\_\_\_  
19 Signature of the Witness  
20 SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day  
21 of \_\_\_\_\_, 19\_\_\_\_.  
22  
23 \_\_\_\_\_  
24 NOTARY PUBLIC  
25 My Commission expires: \_\_\_\_\_